

UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF VIRGINIA
 CHARLOTTESVILLE DIVISION

 NICOLE P. ERAMO, * CIVIL ACTION 3:15-CV-00023
 * OCTOBER 26, 2016
 Plaintiff, * JURY TRIAL, Vol. 1
 vs. *
 *
 ROLLING STONE, LLC, *
 SABRINA RUBIN ERDELY, *
 WENNER MEDIA, LLC, * Before:
 * HONORABLE GLEN E. CONRAD
 Defendants. * UNITED STATES DISTRICT JUDGE
 * WESTERN DISTRICT OF VIRGINIA

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Proceedings recorded by mechanical stenography;
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EXAMINATION

WITNESS: ALLEN W. GROVES

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ADMITTED

(NONE)

DEFENDANTS' TRIAL EXHIBITS ADMITTED

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1 (8:03 a.m.)

2 (Jury in)

3 THE COURT: Four, five, six, seven, eight, nine, ten
4 jurors present, ready for the next day of this trial.

5 Ladies and gentlemen, we're still receiving evidence
6 from the plaintiff.

7 So if you folks are ready, you may call your next
8 witness.

9 MR. CLARE: Thank you, Your Honor.

10 Plaintiff calls as our next witness Allen Groves.

11 THE WITNESS: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MS. MOODY: Please stand, raise your right hand, and
14 be sworn.

15 ALLEN GROVES, called as a witness, having been duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CLARE:

19 Q Good morning, Mr. Groves. We met briefly at your
20 deposition -- actually not so briefly. But, again, my name is
21 Tom Clare. I'm one of the lawyers representing plaintiff
22 Nicole Eramo in this action, and I'll have a few questions for
23 you this morning.

24 A Thank you.

25 Q Will you please introduce yourself to the jury.

1 A My name is Allen William Groves.

2 Q And how are you employed?

3 A I'm employed as the university dean of students for the
4 University of Virginia.

5 Q And how long have you been the dean of students at the
6 University of Virginia?

7 A This is my tenth academic year as the dean.

8 Q When -- in what year were you named dean of students?

9 A I was named the dean of students on August 7, 2007.

10 Q Please tell us briefly about your educational background.
11 What degrees do you hold and from what institutions?

12 A I have a bachelor of arts degree in history from Stetson
13 University in DeLand, Florida, that I received in 1982; and I
14 have a juris doctorate degree from the University of Virginia
15 School of Law that I received in 1999.

16 Q So you're trained as a lawyer?

17 A I am. I spent 16 years as a trial lawyer before
18 returning to the university.

19 Q Please tell us briefly about that experience as a lawyer
20 before returning back to the university.

21 A I believe the first six years, I was engaged in the
22 practice of labor and employment litigation. And for the ten
23 years after that, I was engaged as a partner in a large law
24 firm, handling complex commercial litigation.

25 Q And did you hold any leadership positions in those law

1 firms?

2 A Yes. I was the hiring partner of Seyfarth Shaw LLP in
3 the Atlanta office from 2000 to 2003, and I was the chairman
4 of the litigation practice group in Atlanta from 2003 until
5 2006, when I left to come back to the University of Virginia.

6 Q And when you started at the University of Virginia, did
7 you start in this position as dean of students?

8 A I did not. I initially returned to the university in the
9 position of student affairs development officer. I had been
10 contacted by the vice president and asked if I was willing to
11 return and help raise money for student programs.

12 Q Please tell us briefly about the positions you held at
13 the university and how you ended up assuming your current role
14 as dean of students.

15 A So the year that I was the student affairs development
16 officer, from May 1 of 2006 until August 7, 2007, in addition
17 to meeting with alums and student leaders and talking about
18 what initiatives were important to them, where they thought
19 that we would make the most impact by trying to raise money
20 from alumni, I also ended up working as essentially a
21 strategic adviser to the vice president, Pat Lampkin. And so
22 on a number of planning issues, long-range and short-range
23 planning, I was essentially, you know, her number two person
24 to assist with that kind of work.

25 When the dean at the time, Penny Rue, who had been the

1 dean of the university for eight years, left to become the
2 vice chancellor at the University of California San Diego,
3 Ms. Lampkin approached me and asked if I would be willing to
4 serve as the interim dean of students for the coming year
5 while they conducted a national search.

6 And then ultimately I became a candidate in that national
7 search and was selected by this search committee and by
8 President Casteen to be the dean.

9 Q And when during -- what period of time were you appointed
10 as the permanent dean of students?

11 A I don't remember the exact date, but it was in June of
12 2008.

13 Q Terrific.

14 I know it's a big job, but if you would please describe
15 briefly what your responsibilities are at the University of
16 Virginia as the dean of students.

17 A So I'm responsible for managing several units. Those
18 include, if I go in chronological order, orientation and new
19 student programs when a young person is coming into the
20 university, either as a brand-new first-year or as a transfer
21 student; housing and residence life, which is all the
22 residential living facilities that the university manages
23 where students live; student activities, which is the 600
24 student organizations, what we sometimes call CIOs. These
25 would be religious, political, cultural, club sports, any kind

1 of student group.

2 Fraternity and sorority life, which is a separate office,
3 which is the fraternities and sororities and the four Greek
4 councils; several buildings, including Newcomb Hall, which is
5 the big student union, but about seven other buildings around
6 grounds where students gather and have activities.

7 Then I also serve on the university's threat assessment
8 team, the critical incident management team, the Thomas
9 Jefferson committee, the athletics advisory council, the
10 public arts committee.

11 I may be missing some things.

12 And then I work on issues of safety and security with our
13 police department and the local Commonwealth's attorneys.

14 Q Thank you.

15 In 2013 and 2014, the period we're going to be focusing
16 in on primarily, approximately how many people reported to you
17 and assisted you in discharging those responsibilities?

18 A During that time frame -- it is fewer now, based on a
19 restructuring that I did last spring. But at that time, there
20 would have been, I think, seven to eight associate deans, a
21 couple of assistant deans, an office manager. Probably ten
22 people.

23 Q And was Nicole Eramo one of those associate deans during
24 that time period?

25 A She was. Nicole was an assistant dean. She'd been an

1 assistant dean for a year in the office when I was named the
2 interim dean of students. And when she earned her Ph.D., I
3 promoted her to associate dean.

4 So for, I think, roughly nine of the ten years I was in
5 the role, I supervised Nicole directly.

6 Q How long have you known her?

7 A I met her shortly after taking the job as student affairs
8 development officer.

9 Q And she's reported to you for almost all of the last
10 ten-year period, at least since you assumed the role of dean
11 of students?

12 A Yes. Any -- for nine of the years, I believe, that I was
13 in the office of dean of students, she always reported to me.

14 Q And in the time that Nicole reported to you, how closely
15 did you work with her on a day-to-day basis?

16 A Very closely. Our offices were actually in close
17 physical proximity. So my office is in the corner of the
18 second floor of Peabody Hall; Nicole's office was three doors
19 down on that same side of the building. So we interacted
20 pretty regularly just because of the nature of the space.

21 But Nicole would -- in addition to having, I think, every
22 other week, we had a standing one-hour meeting with each
23 other, which I did with all direct reports, but she would also
24 poke her head into my door if something was going on that she
25 needed to discuss with me.

1 Q And during that time period, the time that Nicole
2 reported to you, were you responsible for evaluating her job
3 performance?

4 A Yes. Each year I completed a written performance
5 evaluation. For the first two years, it was in a form that I
6 had developed and designed, because the university didn't have
7 a comprehensive system. And in the last several years, it was
8 an online common system used throughout the university called
9 Lead@ that you would complete in an online program using a
10 profile.

11 Q Generally speaking, what was your assessment of Nicole's
12 job performance in the years that she reported to you in the
13 office of dean of students?

14 A I had a highly favorable view of Nicole's job
15 performance.

16 Q And what strengths, if any, did you observe her to bring
17 to that position?

18 A She was -- we have a database, an incident database,
19 called Advocate. It's a confidential database where we will
20 enter information if something is going on with a student. It
21 might be that they're dealing with depression or anxiety; it
22 might be that they've been arrested for some reason. Any
23 incident that we need to document and track, we put into the
24 system called Advocate.

25 Nicole was probably the most detailed notetaker, the best

1 person I had in terms of making sure that she documented
2 contacts with students so that we could go back and look and
3 see: When was that last contact made? What was the nature of
4 that communication? Those skills were particularly good on
5 Nicole's part.

6 There came a time when I gave her additional
7 responsibilities. I had her supervising fraternity and
8 sorority life. And so she developed a working knowledge, a
9 very good working knowledge, of hazing. She took on
10 responsibility for a hazing consortium with the University of
11 Maine that we had joined.

12 So there came a point where I added more job duties to
13 her. Almost the entirety of the time that I was her
14 supervisor, she was the chair of the sexual misconduct board
15 and was the point person for handling that work.

16 And so, as I say, my evaluation of her job duties was
17 always favorable.

18 She also, to my mind, was one of the best people I had at
19 follow-up with students, at making sure that after a report
20 came in that she reached out to them and stayed in touch with
21 them and supported them.

22 Q Did you have occasion over the period of time that Nicole
23 reported to you to observe Nicole interacting with students?

24 A Yes. Yes. There were some larger events where I was
25 present and Nicole was present and there were a number of

1 students around. So these would be informal engagements.

2 There were a handful of meetings where I would sit in
3 where she was meeting with a student.

4 There was one very difficult psychological case that I
5 remember where she was the point person for the student, and
6 there were two occasions in which I joined her for that
7 meeting.

8 Q From your vantage point as her supervisor and as the dean
9 of students, how did the students that Nicole interacted with
10 responding to her?

11 A Very favorably. It was my impression that Nicole was
12 very well liked and very well respected by students.

13 Q And in that position that she held discharging the
14 various interactions with students and assisting you with the
15 responsibilities that you had, how important, if at all, is
16 trust between a student and an associate dean in your office
17 as far as helping them manage these situations in their lives?

18 A Immensely important. As I think Nicole knows, every
19 person that works in my office, including the new employees --
20 I just did this a few weeks ago -- that's one of the first
21 things I cover with them, is the students have to trust us,
22 they have to believe us, they have to know that we actually
23 have their interests at heart; otherwise, I don't think we can
24 execute our work.

25 Q I want to talk about the Rolling Stone article "A Rape on

1 Campus," published in November of 2014.

2 Have you had an opportunity to read that Rolling Stone
3 article?

4 A Yes.

5 Q And from your review of the article, are you familiar
6 with the content of it and in particular how the article
7 portrays Nicole Eramo and her interactions with the student
8 named Jackie?

9 A Generally, yes.

10 Q As the dean of students for the University of Virginia
11 and as the person Nicole has reported to since 2007 and as a
12 person who has worked closely with her and evaluated her
13 performance over that period, was the portrayal of Nicole
14 Eramo in "A Rape on Campus" consistent with the person that
15 you know and supervise?

16 A No.

17 Q Would you please explain your view.

18 A As you may remember, both sets of lawyers from my
19 deposition last spring, the -- I read that article the morning
20 of November 19th, early that morning, when someone called me
21 to tell me that it was on online. I read it again in the
22 spring of 2015. And then I read it again several weeks ago.

23 My first impression -- and it remains my impression -- is
24 that it painted a picture of Nicole as someone who was
25 indifferent. I think the phrase that I used was "cavalier" --

1 you know, no pun intended for, obviously, the university
2 name -- but very cavalier, very indifferent; and that someone
3 who indeed was trying to, you know, channel students away from
4 what might be in their best interests; that was suppressing
5 statistics; that had, you know, a view of the fact that the
6 environment was unsafe and she didn't want people to know
7 that; and that at the end of the day that she was not, in
8 fact, advocating for students in the way that they were led to
9 believe.

10 That's the best I can do in terms of -- it's not in front
11 of me, but that was the summation of how I remember feeling
12 and still feel.

13 Q Have you ever known Nicole to channel students away from
14 what might be in their best interests?

15 A Never.

16 Q Have you ever known Nicole to discourage a student from
17 reporting a violent sexual assault to the police or the
18 authorities?

19 A I've never seen information that would lead me to believe
20 that.

21 Q Have you ever known Nicole to discourage a student from
22 filing or pursuing a complaint under the university
23 disciplinary process?

24 A No. Quite the contrary.

25 Q What do you mean by "quite the contrary"?

1 A You know, my knowledge of Nicole's interactions with
2 students -- and I wasn't sitting in the room when she met with
3 these young people; this is based on my conversations with her
4 and my review of notes.

5 MR. PAXTON: Your Honor, at this point if he's not
6 talking from his personal knowledge, I'm not sure that's
7 permissible.

8 MR. CLARE: It's his responsibility to supervise
9 these interactions. He's privy to and reviews as part of his
10 job responsibility these incident databases that reflect the
11 interactions with the students. And he --

12 THE COURT: I think it's important to establish that
13 that's the body of information that his testimony is based on.

14 MR. CLARE: Thank you.

15 BY MR. CLARE:

16 Q Dean Groves, Mr. Paxton's objection may be well taken,
17 but in terms of your basis for these views that you have about
18 Nicole and her interaction with students, what would you base
19 that -- those views on?

20 A So three things. Nicole coming to talk with me after a
21 case had come in and saying, "I just met with this young
22 person" -- generally a young woman. "I met with this young
23 woman. Here's the nature of the conversation we had."

24 Secondly, it would be reviewing from time to time the
25 notes that were in the Advocate system that Nicole had entered

1 where she would recount her interaction with that student.

2 And then lastly, each year at the Take Back the Night
3 week, which is a sexual assault prevention week that's put on
4 by our students and our student activists, Nicole would
5 present a mock sexual misconduct trial.

6 So she would -- one night of that she would put on a mock
7 trial so the students could see, here's how these proceedings
8 take place, and then she would talk generally about the
9 options that were available to students.

10 So my understanding from those three sources of
11 information was that Nicole was telling students there are a
12 variety of things you can do here, and you can do them
13 concurrently. In other words, you don't have to pick one and
14 exclude the others; you can do many of these things.

15 Q You just described the two things that -- putting aside
16 for a moment the Take Back the Night and the mock trial piece
17 of it, you described informal interactions with Nicole around
18 the office as it may relate to specific student situations and
19 also your review of the Advocate notes.

20 Did you give each of those two things as it relates to
21 Jackie's case?

22 A Oh, yes.

23 Q And so now with that testimony and foundation in mind,
24 and limiting yourself to your review of those materials and
25 those interactions with Nicole, I'll ask you the same

1 question.

2 Have you ever known Nicole to discourage a student, any
3 student, from filing or pursuing a complaint under the
4 university disciplinary process?

5 MR. PAXTON: Again, Your Honor, I don't know that a
6 foundation has been laid.

7 THE COURT: I disagree. He's being asked if it's
8 within his knowledge.

9 THE WITNESS: Sitting here today, searching my
10 memory, I cannot think of an instance in which I believed that
11 Nicole had dissuaded a student from actively pursuing their
12 options.

13 BY MR. CLARE:

14 Q Have you ever known Nicole to use the university
15 resources -- the support, counseling, just general kindness --
16 to coddle, if you will, a student into not reporting an
17 assault?

18 A No. She certainly made students aware of the women's
19 center and the counseling center and the counseling resources
20 that were available to victims of trauma. But she never -- I
21 mean, if your question is did she attempt to use those
22 resources to dissuade somebody from pursuing a more formal
23 action through the university or the police? No, no.

24 Q Have you ever known Nicole to refer to the University of
25 Virginia in any setting or context as the rape school?

1 A No. The only time I've ever heard that was when I read
2 the article.

3 Q And how was that review of the article consistent or
4 inconsistent with your experience with Nicole in the way that
5 she refers to the university?

6 A Flatly inconsistent.

7 Q Have you ever known Nicole to suppress a sexual assault?

8 A No.

9 Q Have you ever known Nicole to put the reputation of the
10 university above the interests of the students when it comes
11 to sexual assault?

12 A No.

13 Q Have you ever known Nicole to take any steps whatsoever
14 to hide UVA sexual assault reporting rates or sexual assault
15 statistics or keep those numbers low?

16 A No. In fact, in the summer of 2014, meaning the summer
17 before the article came out in November, I had gone to Nicole
18 and asked her to give me the number of reports that we had,
19 because in my speech to parents during summer orientation, I
20 cited the 30 some-odd number of sexual assault reports we had
21 had the prior year, I cited the number of physical assaults,
22 and I talked about alcohol statistics. And those had come
23 from Nicole.

24 Q As the dean of students, what is your perspective and the
25 perspective of your office regarding the proper role of sexual

1 assault reporting statistics? In other words, what do you
2 want to see happen with those reporting numbers?

3 A What do I personally want to see happen?

4 Q Yes, sir.

5 A I want them to go up.

6 Q Why is that?

7 A Because if they're going up, it means that we've created
8 a better culture in which the students will bring them
9 forward. What we know -- you know, students have asked me
10 over the years -- and I'm sorry. This requires a little
11 longer answer. I apologize.

12 But I've had a lot of conversations with students over
13 the years. I try to be very accessible to students to talk
14 about a lot of challenging issues. And what I've always said
15 to them is, "Look, I know this sounds counterintuitive maybe
16 to you, but we will know we're doing a better job if the
17 numbers are going up. Because if the numbers are going up, it
18 means that we are creating more and more trust in the eyes of
19 the student body that, if they come forward to the university,
20 that something will be done with that that is fair and
21 equitable and responsive."

22 And Nicole heard me say that many times, which is don't
23 worry about, you know, your position here if those numbers go
24 up, because it means the education and the outreach are
25 working.

1 Q And, as the dean of students, did you feel that you had
2 support for that view, meaning sexual assault -- your hope
3 that sexual assault reporting numbers would go up? Did you
4 believe that you had support for that view from higher-ups in
5 the administration?

6 A I've had that conversation with the vice president and
7 the president, and they both agreed with me.

8 Q And did you observe Nicole Eramo as either sharing or
9 implementing that view that you just expressed?

10 A Absolutely.

11 Q I'd like to talk now briefly about the period immediately
12 after "A Rape on Campus" was published. Shortly after the
13 article was published, you received a visit from one of the
14 students referenced in the article as one of the three
15 friends.

16 Do you recall that?

17 A December the 1st, yes.

18 Q I'm going to test both of our eyesight here and pull up a
19 document on the screen.

20 MR. CLARE: Brian, if you'd please pull up what's
21 been previously admitted as Plaintiff's Trial Exhibit 009 at
22 Bates range ending 8782.

23 THE WITNESS: And may I ask the reporter, am I
24 talking too quickly?

25 THE COURT REPORTER: Slower would be lovely.

1 THE WITNESS: Yes, ma'am. I'm sorry.

2 THE COURT REPORTER: Thank you.

3 THE WITNESS: I speed up. I'm sorry. It's my
4 nature. So I'll try, ma'am. Thank you.

5 BY MR. CLARE:

6 Q So we're going to zoom in on this, and I can show you a
7 hard copy, but I just wanted to orient you to what this is.

8 This is a document that's been previously admitted as an
9 excerpt from the Advocate system.

10 MR. CLARE: Brian, if we can just zoom in on the
11 upper right-hand corner and show Dean Groves.

12 BY MR. CLARE:

13 Q This is an entry that was created by you on Tuesday,
14 December 2, 2014, at 10:14 a.m., just to orient you to the
15 document.

16 A No, I see that. And I was actually -- when you first put
17 this on the screen before you zoomed in, I was thinking of
18 that scene from My Cousin Vinny where she said, "I think I
19 might need better glasses," because I couldn't see anything.

20 But, yes, you zoomed in, and I see Tuesday, December 2,
21 2014, 10:14, created by Allen Groves.

22 So this is an entry in Advocate that I created at the
23 date and time noted.

24 Q Thank you.

25 MR. CLARE: Brian, if we could zoom back out on the

1 document and now zoom in on the text of the entry so Dean
2 Groves can read it along with us.

3 BY MR. CLARE:

4 Q All right. Because it is a little bit fuzzy and because
5 the monitors that the jury have in front of them are a little
6 bit smaller and it's not as close to them as you, can you read
7 that aloud, please. And we are not referring to the full name
8 of the students that are involved, but if you would either
9 skip over the name or refer to them as just "student," we can
10 go from there.

11 A If I know who I'm referring to, you don't want me to use
12 the name?

13 Q You can use their first name.

14 A "Student Ryan came to ODOS" -- which is my office -- "on
15 12-1-14 and asked to speak with AWG." That would be me. "He
16 advised that he was referenced in the RS" -- Rolling Stone --
17 "article as Randall. He wanted to speak with someone in
18 response to TAS" -- that's President Sullivan's -- "request
19 that people with knowledge come forward.

20 "AWG provided Ryan with contact information, name, and
21 phone number for CPD" -- that's Charlottesville Police
22 Department -- "Detective Via and Sergeant Harris. AWG also
23 phoned" Delegate -- "Detective Via and left a voice message
24 for him in Ryan's presence.

25 "Ryan stated that although the Rolling Stone -- RS --

1 article states that he and other friends dissuaded Jackie from
2 going to police, in fact, the opposite was the case. He
3 specifically urged that she go to the police, but Jackie
4 refused. AWG asked that Ryan not provide any details to AWG
5 but instead go to the Charlottesville police -- CPD -- and
6 speak with them."

7 Q Thank you.

8 Is that -- what you just read to us, is that the entry
9 that you input into the Advocate database to describe your
10 meeting with Randall/Ryan?

11 A Yes. Yeah. This was put into the system the next day
12 based on the notes I had taken during my meeting with Ryan.

13 Q And is that a fair and an accurate summary of your
14 meeting with Ryan?

15 A Yes. The only thing that it doesn't reflect was the
16 circumstances. He had come to my office, told the
17 receptionist it was very important that he see me. She came
18 to my office and interrupted me, and I said -- he didn't say
19 what it was about, but I said, "Bring him back."

20 He came in and sat down in my chair, introduced himself
21 to me by his full name, said that he was Randall in the story.

22 I basically said what is here. I put my hand up and
23 said, "You know, the president has turned this over to
24 Charlottesville police. I don't want you to give me the
25 details; I want you to give it to the Charlottesville police.

1 May I call them?" And he said yes.

2 And I picked up the phone, and I made the phone call that
3 I mentioned here. I got voicemail, so I left a message for
4 Detective Via, giving him Ryan's name and cellphone number.
5 And then I wrote on the back of one of my business cards the
6 Charlottesville police, the two officers' -- the detective and
7 the sergeant's -- names and cellphone numbers, and handed that
8 to him and said, "I hope that you will please go talk to them
9 about this."

10 Q Thank you.

11 I'd like to shift gears again briefly and talk about
12 changes that were made to Nicole's employment responsibilities
13 after "A Rape on Campus" was published.

14 Shortly after "A Rape on Campus" was published, the
15 university directed Nicole not to be the point of intake for
16 sexual assault cases that were coming in; is that correct?

17 A That is correct.

18 Q And why was that?

19 A Vice President Lampkin, Associate Vice President Susan
20 Davis, and I had talked in the day or two -- several times,
21 but in the day or two after the article had been published, in
22 that maelstrom that was unfolding. It was our assessment and
23 belief that Nicole could not be put in the position of doing
24 any intake whatsoever involving individuals that were coming
25 forward to report sexual assaults or any kind of sexual

1 misconduct, or also the people who had been accused, what we
2 call respondents.

3 The belief was, given the article, that individuals in
4 the system would believe that Nicole somehow was not capable
5 of carrying out those duties in a fair and equitable way or
6 that she might overreact in one way or another based upon what
7 the article had said about her.

8 Q And to be clear, was that a perception that you and
9 Ms. Davis and -- well, that you shared? Let's start with
10 that.

11 A I did not believe that she was anything other than fully
12 capable of carrying out her duties. My fear, and the fear of
13 the other two officials that were with me in those
14 conversations, was that the perception across the student body
15 and elsewhere would be what I have described, based on the
16 article.

17 Q Thank you.

18 And how important is it, as the dean of students and from
19 your vantage point, that -- what is the perception of the
20 student body as it relates to someone in an intake position
21 doing their responsibilities in assisting them?

22 A Hugely important.

23 Q And can you explain why?

24 A The only way that any system like ours, right, where we
25 are not the police, we are the institution where a young

1 person is matriculating, they are enrolled, the only way that
2 system is going to work is if they believe that information
3 they bring forward will be handled carefully, confidentially,
4 sensitively, but that we will also do the right thing with the
5 information and act on it appropriately and fairly and
6 equitably and in a way that is nondiscriminatory.

7 Q I take it from the fact -- there's been some testimony
8 that Nicole continued to receive some salary increases in the
9 years after "A Rape on Campus" was published. I take it from
10 that fact that she continued to receive salary increases that,
11 based on your own personal experience with Nicole and
12 evaluation of her work, that you personally did not either
13 lose trust in her abilities or lose trust in her to discharge
14 her duties. Is that correct?

15 A That is correct.

16 Q And as the dean of students then, why would a negative
17 perception of her in the community or the student body be
18 relevant to her ability to work with students going forward,
19 even if you and other administrators at the university didn't
20 share that perception?

21 A It goes back to the answer I gave you a few minutes ago
22 about reporting. If students believe that the system is
23 biased or that the person that is responsible for doing intake
24 has some predilection to protect the university or dissuade
25 them from action in their best interests, they will not come

1 forward.

2 Q And that was the way that -- you personally and the other
3 administrators that you consulted with, that was your concern
4 about the way the students would perceive Nicole after the
5 Rolling Stone article?

6 A Yes, that we would -- it would reverse all of the gains
7 we thought we were making in that area.

8 Q And what was your basis for believing that students and
9 others in the community would hold that view?

10 A Some of what was being published around the country, the
11 conversations that were taking place on national media, the
12 exposure of that depiction of Nicole was very, very
13 widespread. And I know that she was receiving a lot of
14 e-mails from people outside the university, from alums, from
15 others, that were highly critical of the way she had been
16 portrayed. And thus, a leap they were making from that, that
17 that was the person that she was.

18 Q Nicole was officially moved out of the office of dean of
19 students in March of 2016; is that correct?

20 A March 1st, I believe.

21 Q And in her new role outside of the office of dean of
22 students, Nicole no longer officially carries the title of
23 dean; is that correct?

24 A She lost the title of dean at that time.

25 Q Would you describe as best you can what the title of dean

1 or associate dean connotes in the UVa community?

2 MR. PAXTON: Your Honor, I'm not sure what this
3 witness' personal perception of the dean's role and title, how
4 that's particularly relevant. Since he's talking about
5 himself, he's obviously going to have a favorable view of
6 that. So it seems to me that this is a -- I'm just not sure
7 how he can testify as to how it's perceived by others.

8 THE COURT: I didn't understand that he was asked
9 for a value judgment about the title of dean; he was asked
10 what it meant within the university community.

11 MR. CLARE: Dean Groves has obviously carried this
12 title for over a decade and has personally experienced what it
13 means and has also had responsibility for delivering that
14 title to the people that work for him. And I think he can
15 speak to the --

16 THE COURT: To the extent that he's asked to comment
17 on the significance of the title within the community, I think
18 it's a fair question.

19 MR. PAXTON: Thank you, Your Honor.

20 BY MR. CLARE:

21 Q I'll ask it the way that Judge Conrad suggested.

22 What is the significance of the title of dean in the
23 University of Virginia community?

24 A It is my perception that it matters a great deal. My
25 full title is associate vice president of student affairs and

1 university dean of students.

2 You will not see associate vice president of student
3 affairs on my signature line in my e-mail or on my business
4 card because what matters in our community is that I am Dean
5 Groves.

6 And I think I said in my deposition last spring, you
7 know, even when students will write to Vice President Lampkin
8 it's almost always "Dear Pat and Dean Groves." That title
9 matters. I had a student tell me once, "I have no idea what
10 your first name is because everybody knows you as Dean
11 Groves."

12 Well, the same was true of Nicole. She was Dean Eramo.
13 And that mattered to her. And I remember a very painful
14 conversation when I sat down to tell her that she was losing
15 that.

16 MR. CLARE: Thank you, Dean Groves. Those are the
17 questions I have for you this morning. Appreciate you being
18 here.

19 THE WITNESS: Thank you, sir.

20 CROSS-EXAMINATION

21 BY MR. PAXTON:

22 Q Good morning, Dean Groves.

23 A Good morning.

24 Q I introduced myself to you before we started today, but
25 my name is David Paxton, and I represent the defendants.

1 Let me first apologize. This cross-examination, as it
2 is, will be a little disjointed because we originally thought
3 you weren't coming in until Friday. And we learned late
4 yesterday that you were going to come today because I believe
5 you've got a trip or something that's going to take you out of
6 town?

7 A That was a revelation to me as well, because Thursday I'm
8 completely booked in things that I couldn't move. So they
9 asked me could I come sooner. And I said, yes, that's fine.
10 And, candidly, when the young man, the paralegal, called me to
11 see if I could move it, he perceived that you-all are getting
12 tired, which I said I understand. And then I said I will come
13 as soon as you need me so --

14 Q Yeah. And so I apologize because I thought I had a few
15 more days to get things together, so I may fumble a little bit
16 with the documents.

17 A Yes, sir. I respect that. That's fine.

18 Q Thank you.

19 Now, I understand that you -- in response to Mr. Clare's
20 questions, that you had the challenge of trying to manage
21 lawyers; is that right?

22 A When I was a lawyer?

23 Q Yeah.

24 A I did indeed. I was also on the lawyer development
25 committee. So, in addition to chairing the practice group, I

1 was responsible for the development of young lawyers, yes.

2 Q And that's a difficult job. Lawyers are very difficult
3 to manage, aren't they?

4 A They tend to be very confident people, yes.

5 Q And I understand that the university brought you back to
6 help them raise money?

7 A Initially, yes.

8 Q Right. And so I take it that you'd been active in
9 fundraising for the university in your role before that?

10 A No, not for the university. I had served as the chairman
11 of the board of a children's psychiatric hospital in a
12 volunteer capacity in Atlanta, Georgia, where I practiced.
13 And I had helped them with a capital campaign.

14 I had been the -- what was called the international
15 president, essentially the chairman of the board, of the Pi
16 Kappa Alpha fraternity, my college fraternity, and had also
17 assisted in a campaign that they had engaged.

18 And then, lastly, there was an organization called the
19 Atlanta Executive Network, where I had helped them as a board
20 member with some fundraising.

21 Q Right. And so I understand from what you just said that
22 you were a member of a fraternity in your undergraduate days;
23 is that correct?

24 A I still am, yes.

25 Q Oh, you still are? Oh, okay.

1 A Yes. You're a member for life, so I'm still considered a
2 member.

3 Q Okay. And from your testimony, I take it that you felt
4 like you know Nicole Eramo pretty well?

5 A You know, we -- I would answer that by saying yes. And
6 simply to elaborate, we don't have a social relationship. We
7 don't go to dinner or our families don't hang out with each
8 other. So my relationship with Nicole is professional,
9 meaning in the workplace, but it is a very positive
10 relationship of many years' duration.

11 Q And you were asked by Mr. Clare about your observations
12 of Ms. Eramo's relationships with students.

13 A Yes, sir.

14 Q And there were students that she got particularly close
15 with. Would you say that that was true as well?

16 A Absolutely.

17 Q And she'd have students babysit for her in her house?

18 A You know, I have heard her say -- I never personally
19 observed that. I have heard her say that. And I went to her
20 house once.

21 She ran a program for us during the summer called L2K,
22 Leadership 2000, for a diverse group of student leaders, where
23 they would come for a week to the university and stay over the
24 summer and meet each other and network with university
25 officials.

1 And there was one or two barbecues. She would have
2 weekly dinners for those students during the summer at her
3 house. And there were a couple of those each year that I
4 would try to come out to.

5 So I have been in her home and seen her interacting in a
6 casual way with students, meaning a nonofficial capacity. And
7 those were very warm relations, as far as I could tell.

8 Q Did you ever meet Alex Pinkleton? Is that a name that
9 you know?

10 A Oh, I know the name. And I know who Alex is. And I
11 believe that I have met her on one occasion.

12 Q And so you don't really know what Alex's relationship is
13 with Dean Eramo?

14 A No. I mean, I have heard Nicole speak favorably of Alex
15 in the past as an activist in the sexual assault area. And
16 Nicole worked very closely with the activists.

17 I mean, Alex Pinkleton, Sara Surface, Emily Renda, those
18 were three young women that I knew Nicole was working closely
19 with them on this topic.

20 And I had a number of opportunities to meet Sara and a
21 number of opportunities to interact with Emily. With Alex, I
22 have not had those same opportunities.

23 Q Would you be surprised to learn that in communications
24 with Alex Pinkleton and Jackie, that there's been testimony in
25 the case so far that Dean Eramo, in a meeting on September 17,

1 told those two students that the university was "flat-out
2 fucked" because of the situation that existed with Hannah
3 Graham and the fact that there was a Rolling Stone article
4 that was likely to come out?

5 A I don't know that I have heard that before. That was
6 September of 2014?

7 Q Correct.

8 A Before the article came out?

9 Q Correct.

10 A Yeah, I don't know that I've heard that before.

11 Q Would that surprise you?

12 A Yes.

13 Q Is that -- would that be inconsistent with the Dean Eramo
14 that you know?

15 A Dean Eramo, like, candidly, me, is capable of
16 occasionally using off-color language if, you know, you feel
17 the need. I try -- I try to be better, but I lose --
18 occasionally, I slip as well.

19 So that said, the sentiment is surprising to me.

20 I will tell you, during that time, I was deeply
21 engaged -- it was a very difficult fall semester for us, I
22 think the most difficult of any of the ten years I've been
23 dean. Hannah Graham's disappearance, I -- sorry. Sorry.

24 (Pause)

25 I still have the text message I sent her on that Sunday

1 telling her she wasn't in trouble, and -- sorry.

2 And so all the work we did with students and her family,
3 her parents and her brother.

4 And then we had a young man commit suicide in the
5 residence hall that same fall. And I was the person on point
6 to go down to the residence hall to sit with the young men on
7 that hall and their RA. And I was the person on point to work
8 with his family throughout that.

9 And so it was a very difficult, emotional time for us,
10 given the things that were happening in a way that I think we
11 had never seen before.

12 I'm sorry, I -- it's -- I'm sorry. Yeah.

13 Q That's perfectly understandable.

14 And would you also be surprised that Dean Eramo would
15 share text messages with students that she had interacted
16 with, like Sara Surface, Alex Pinkleton?

17 A I'm older than Nicole, and so I have only recently, in
18 the last couple of years, begun to text with students, because
19 I will send them three e-mails and they will not respond to
20 any of them; and then I will text them, and in five seconds,
21 they've texted me back, saying, yes, sir, you know, yes, Dean
22 Groves. Occasionally, they text back and say, come on, is
23 this really Dean Groves who's doing this? And I'm like, no,
24 it's me, it's me, it's me.

25 So I'm not the most technologically savvy person. You

1 know, I can't speak for Nicole.

2 But certainly young people, our students, live through
3 text messages and chat systems, whereas I'm of the generation
4 of e-mails.

5 Q Well, if it's any consolation, I graduated ten years
6 before you from the University of Virginia's law school, so I
7 get it.

8 Would you be surprised in those text messages between
9 Dean Eramo and students like Sara Surface and Alex Pinkleton
10 that she would describe them as her "awesome bitches"?

11 A Sure. Yes, I would have to be honest with you and say
12 that's a surprise to me. I'm a -- as Nicole heard me say --
13 Nicole is doing on-boarding now for our employees and
14 orientation for new employees. And she knows that in a
15 session she had me lead with Susan Davis, I think about a
16 month ago -- and I'm actually going somewhere with this. I
17 promise.

18 I explained to all those new employees that most people
19 are casual by nature and have to work to be formal. And I am
20 one of those unusual people that is wired the opposite way.
21 So I am formal in my normal default mode. And I have to work
22 to be more casual. So that is certainly not a way that I
23 would communicate.

24 But Nicole is a much more casual person than I am. And
25 so -- but, yes, it does surprise me to hear that phrase. I

1 might have told her, hey, Nicole, I might use different
2 language, if she had mentioned that to me, because my style
3 was very different.

4 Q And I think you've talked previously about the importance
5 of the role of dean and the title of that. Those types of
6 communications, communicating with the students, that they are
7 "awesome bitches" or that the university is "flat-out fucked,"
8 are those appropriate things for a dean to say to students?

9 A Well, certainly, as to the "flat-out" comment --

10 Q Yes.

11 A -- if somebody brought that to my attention -- let's say
12 somebody forwarded that to me. I would sit down with anyone
13 who worked for me, and I would say, number one, I don't
14 believe that. You know, I don't believe the truth of that
15 statement. But, secondly, I would prefer that you not use
16 that language in interacting with students.

17 Yes, I would have said that.

18 Q All right. One thing -- there are a couple of things
19 that Mr. Clare did not cover with you. And, unfortunately,
20 this -- this is our opportunity to have you on the stand,
21 so -- but it relates to what he questioned you about.

22 Would you agree with me, Dean Groves, that, beginning in
23 January of 2014, with the White House's proclamation that
24 there needed to be a serious effort to look at how colleges
25 were handling sexual assaults, that 2014 was a year in which

1 there was a lot of discussion about how colleges were handling
2 sexual assaults across the United States?

3 A Not exactly. I would say that that conversation began in
4 April of 2011. So the federal government had not issued
5 guidance under Title IX since 2001. What they called "Dear
6 Colleague letters."

7 And so in April of 2011, they issued what was considered
8 a very important Dear Colleague letter, where the
9 administration was laying out in a very -- for the first time,
10 in my opinion, a more comprehensive way, an idea of
11 expectations of what they wanted universities to do.

12 So, for example, as a result of that 2011 Dear Colleague
13 letter, we changed the standard of proof that we used from
14 clear and convincing evidence to a preponderance of the
15 evidence, because that was one of the things they were putting
16 in the guidance. And so universities around the country,
17 Stanford, Vanderbilt, there were a number of schools that used
18 clear and convincing that then switched to preponderance.

19 There were a few other things that were put into place.
20 We -- it goes back four years, so probably not long after
21 that -- began to do the Green Dot Bystander Intervention
22 training program, where we brought in experts to talk to all
23 the first-year and transfer students about the need to
24 intervene when you saw these kinds of things. We ramped up a
25 lot of our education.

1 Your reference to 2014, the next wave of guidance and
2 detailed guidance from the federal government comes out on
3 April 29, 2014, a very detailed -- what we think of as an FAQ,
4 frequently asked questions, where the government kind of posed
5 hypotheticals or kinds of circumstances and said here's what
6 we might want schools to think about and consider.

7 So after the Dear Colleague letter in 2011, there were
8 many conversations at the university and, indeed, a change to
9 our policy.

10 After the guidance that came out in 2014, as I recall,
11 there was another version of the policy that was created to
12 respond to that, and some additional programs put into place,
13 as I recall.

14 Q And thank you for that --

15 A Certainly.

16 Q -- because I was trying to -- you're right. So for a
17 number of years after the Dear Colleague letter came out,
18 universities were struggling to figure out how best to respond
19 to the government's initiative?

20 A That's a very fair characterization.

21 Q And, in fact, there were many critics of how universities
22 were responding?

23 A That is also true.

24 Q So no matter how hard the university was trying to get
25 into compliance, you still had critics; is that right?

1 A Yes.

2 Q And UVa was the subject of criticism from time to time
3 from some of these critics. Would you agree with that?

4 A I would.

5 Q And you recall that there was a posting on campus in 2012
6 by anonymous Wahoo, a young woman, who was dissatisfied with
7 her experience with the university's system? Do you remember
8 that?

9 A No. It's funny, as I said in my deposition, I don't
10 remember seeing that. And I certainly don't know who that
11 was. It was shown to me in the deposition. I don't recall
12 that. It's possible that I saw it at the time, but that is
13 one thing that was shown to me that I don't have an
14 independent recollection of. I'm sorry.

15 Q All right. Do you know who Emily Renda is?

16 A I do.

17 Q And we met her earlier --

18 A Oh.

19 Q -- through her deposition. She's a very impressive young
20 lady, isn't she?

21 A Yes. I always found her to be.

22 Q Yeah. And she asked you to review her testimony that she
23 was going to give to Congress; is that right?

24 A Well, yes and no. I will say that is a mistake that I
25 will own. She sent me an e-mail that was shown to me in my

1 deposition that had an attachment, either a Word document or a
2 PDF. She said in the e-mail that she was going to -- she had
3 been asked to come testify at Congress. And I knew that Emily
4 was an activist in the issue of sexual assault. In fact, she
5 and I were two of the 30 Virginians that served on the
6 governor's task force that was formed, Governor McAuliffe
7 formed. And she, in fact, chaired one of the three subgroups
8 of that.

9 And so Emily had developed a fairly high profile. And
10 the mistake that I made when she sent that e-mail -- because I
11 realized, when it was shown to me in my deposition, that there
12 was an attachment. And when I got the e-mail from her, I
13 assumed she was saying that she was going to go to Capitol
14 Hill and testify as a activist. And I think I said, great,
15 good luck, or -- and I would never -- if a student said to me
16 I've been asked to testify or I have a chance to testify, I
17 would never tell them you can't go talk.

18 But it is true that I never opened the attachment,
19 because I assumed that she was going to go talk about her role
20 as an activist, her role as a survivor. And so I never read
21 the attachment. And I regret that, because it's been shown to
22 me. And I realize she talked, in that attachment, I think, in
23 a lot more detail about what she planned to say. I still
24 wouldn't have dissuaded her from -- as an individual citizen,
25 her right to go testify, but I confess I never opened the

1 attachment.

2 Q And at the time she appeared before Congress, she was an
3 employee of the university at that point, correct?

4 A I'm almost certain that that's right, because Vice
5 President Lampkin had hired Emily right after she graduated to
6 be a program coordinator in Ms. Lampkin's office, working on
7 prevention. And I'm almost certain -- although she didn't
8 report to me and wasn't in my chain of command, I'm almost
9 certain she started that summer.

10 Q And you did understand that when she went before
11 Congress, she would be under oath in giving the information
12 that she gave?

13 A Absolutely. Yes.

14 Q And you now understand that she provided information to
15 Congress about Jackie's story without using Jackie's name; is
16 that correct?

17 A Yes, sir. I learned that later. I think after the
18 Rolling Stone article was published and there were many things
19 being discussed, that's the point that I think I came to know
20 that.

21 Q All right. And it's also your understanding that this
22 testimony by Ms. Renda, in which she describes the gang rape
23 of Jackie to Congress, is a matter of public record?

24 A I'm sorry. Her testimony to Congress?

25 Q Yes.

1 A Yes. I assume that's a matter of public record in the
2 Congressional Record or somewhere.

3 Q Right. And it's fair to say that you're proud of her for
4 being an outspoken advocate for victim rights?

5 A Oh, I was always proud of Emily, yes.

6 Q Now, some of the critics that have been particularly
7 critical of UVa are -- we've heard some testimony about that,
8 but I want to ask you about a few of them.

9 Do you know the name Wendy Murphy?

10 A Yes.

11 Q Who is she?

12 A Let's see. My knowledge of her, I first saw her when she
13 was on CNN as a commentator during the Duke lacrosse case.
14 And she mistakenly made a statement that there was DNA that
15 implicated the lacrosse players when, in fact, it was exactly
16 the opposite.

17 I've seen -- someone forwarded me once an article she
18 wrote in a small New England paper where she was pointing to
19 Harvard and Princeton and Virginia and saying that she knew
20 students at each school that she was representing that she
21 thought they had not handled sexual assault appropriately.

22 And then I know that -- whether she was counsel of record
23 or simply an adviser, I know that she was connected to a
24 complaint that a student had brought -- or maybe she had
25 brought for that student or maybe another lawyer had -- with

1 the Office for Civil Rights in the Department of Education in
2 2011.

3 Q And that was a complaint against the University of
4 Virginia, and it actually named Ms. Eramo; is that correct?

5 A No. It was a complaint -- you don't name, I think,
6 individuals like you do in litigation.

7 It was a complaint filed with OCR in 2011 in which this
8 young woman alleged that the way in which her case had been
9 handled through the sexual misconduct board and the ultimate
10 verdict, that she thought it had been handled inappropriately.
11 And she raised a number of issues in there about what evidence
12 was admissible, the rape kit that was done at the hospital.

13 I remember reading it. It's been a long time. But there
14 were several issues that she was putting into play, and that
15 Ms. Murphy, or maybe it was the local law firm in Virginia or
16 Washington, filed a lawsuit in federal court in Washington
17 against the Department of Education, trying to block them from
18 implementing some of the guidance that they had published.

19 Q But the complaint was about the way the student
20 misconduct board had handled her case; is that correct?

21 A The OCR complaint, yes.

22 Q And Ms. Eramo was the chair of the sexual misconduct
23 board; is that correct?

24 A Yes.

25 Q Okay.

1 A At that time, yes.

2 Q Yes. And do you also know Susan Russell?

3 A Oh, yes, yes. I say I know her; I've never met her. But
4 I know of her, yes.

5 Q And you're aware that Susan Russell has been very
6 critical of the way the University of Virginia has responded
7 to sexual assault over the years?

8 A Yes. Her -- the issue that she has raised in the past
9 predates my time as dean. It was a case from 2004, I believe.
10 So I was not at the university when that case happened. I
11 have never pulled that file from the archives and looked at
12 it.

13 But I do know that that is a case that she has talked
14 about over the years as feeling it was mishandled. That would
15 predate Ms. Eramo and me in the office.

16 Q Right. I understand that. But she's continued to be a
17 critic of the university and other colleges in Virginia about
18 the way they respond to sexual assault, not being more
19 transparent about the numbers.

20 Do you recall that?

21 A She had a website for a while.

22 Q Right.

23 A There was a period -- I don't think it's active anymore,
24 but there was a period that she had a website. But when I
25 looked at the website a couple of times, it was old

1 information. I don't know that it had been updated. It was
2 still what she had created in the first place. Then at some
3 point a few years ago, the website stopped to run.

4 I have seen her comment in the Comments section of
5 Cavalier Daily articles where she posts under her name, which
6 I respect, and says, you know, here's my view of how UVa
7 handles it. So I've seen that.

8 I'm trying to think -- to your point about have I seen
9 her speaking in a broader context other than making comments
10 under stories? I did see her one time when I went to Richmond
11 when the governor -- after the governor's task force and he
12 was signing some bills that the legislature had passed. And I
13 was talking to David Toscano, who is the delegate in the house
14 for this area, who I know well. And David then walked over
15 and was chatting with Susan Russell. And I recognized her.
16 And the Harrigans were there as well.

17 So I saw several people that I recognized.

18 Q So you mentioned the governor's task force. And I don't
19 want to spend too much time on this, but the governor of
20 Virginia actually appointed a task force in 2014 to respond to
21 real concerns about the way universities were handling sexual
22 assaults to come up with best practices and recommendations;
23 is that correct?

24 A That is correct.

25 Q And, in fact, through that, part of what came was

1 legislation that was passed the following year in 2015; is
2 that correct?

3 A I think it's hard to separate -- the short answer is yes.
4 The more complicated response is Hannah Graham played a role
5 in that as well, even though the issue of sexual assault was
6 wrapped in with that in ways that were never really fleshed
7 out in terms of, I think, the public's perception.

8 But what I will say is I think the issue with Jesse
9 Matthew and the fact that it later came out that he had been
10 at one school and had been subject to an accusation and had
11 moved to another school, I know that also helped motivate some
12 of the legislation in terms of what we do now with transcript
13 notations when a student is under investigation.

14 Q And, in fact, that's a really good point, because one of
15 the things that came out earlier in the trial was that
16 University of Virginia, if someone were found responsible for
17 a sexual misconduct charge, you would actually put that on the
18 transcript of the student; is that right?

19 A Yes.

20 Q That was -- that didn't start until March of 2015 or
21 July, actually, the 1st, of 2015; isn't that right?

22 A It would have started -- I think legislation in Virginia
23 becomes effective July 1 of each year.

24 Q Right.

25 A So it would have been when that legislation became

1 effective, yes.

2 Q So during 2013 and 2014, there would not have been any
3 kind of notation on a student's transcript that they had been
4 found responsible for a sexual misconduct; is that correct?

5 A It would be the same notation that would be on there for
6 any disciplinary violation. So if someone were suspended for
7 sexual misconduct or suspended, let's say, for a physical
8 assault, it would say, I think, "disciplinary suspension," and
9 it would show at the end of the semester or the semester when
10 that happened, and that would be part of the transcript.

11 My understanding of the law that was passed in the
12 Commonwealth that became effective in 2015 was a specific
13 notation about sexual misconduct.

14 Q Right. And, Dean Groves, you would agree with me,
15 wouldn't you, that, as a public institution, UVa and yourself
16 are subject to criticism from time to time --

17 A Yes.

18 Q -- as to your job?

19 A Yes.

20 Q Sort of comes with the job, right?

21 A I have said publicly on more than one occasion, I am the
22 captain of this metaphorical ship, and I understand that that
23 carries with it criticism.

24 Q Right. And were you pleased in 2012 when Playboy
25 magazine named UVa as the number one party school in the

1 country?

2 A I was not.

3 Q And why is that?

4 A Well, as the dean, number one, I mean, I don't think at a
5 school that prides itself on academic excellence and preparing
6 people to be citizen leaders in the model that Jefferson
7 envisioned, I don't think that's something that anyone in an
8 administrative role would take pride in.

9 I did talk to the Cavalier Daily and the students at the
10 time, and I said, "Understand that there is no factual
11 underpinning. There is no methodology. There is no science
12 between Playboy making this designation. There is nothing
13 that, if you required them to prove 'On what do you base
14 this?' that they could produce something even remotely
15 statistically relevant or scientific."

16 But, yes, I'm cognizant that they said that. And, no, I
17 was not happy.

18 Q And would you agree that that designation, as you've
19 indicated, is not a scientific study, it certainly was a
20 perception of the University of Virginia at that time?

21 A In the universe of people that read Playboy or that may
22 have seen that quoted somewhere else, yes.

23 Q And would you agree that the party scene at the
24 University of Virginia generally revolves around the
25 fraternities and sororities on campus?

1 A I would say that what's called Rugby Road, which is where
2 a lot of fraternities and sororities exist -- although
3 sororities don't host social functions; fraternities do -- I
4 would say that, yes, that's one of -- that and The Corner
5 district, where a number of bars are, would be two places that
6 are very active in the social scene, yes, sir.

7 Q And one of your other recent graduates, Brian Head, came
8 and shared with us on Saturday. And he testified that about a
9 third of undergrads are active in the Greek system,
10 fraternities and sororities.

11 Does that seem correct to you?

12 A That is accurate. I think just slightly over 30 percent.
13 About a thousand young men and about a thousand young women go
14 through rush every February.

15 Q So by "rush," that's the process of joining?

16 A Yes. I'm sorry. Rush is how organizations recruit new
17 members. Unlike many schools, we don't do it immediately upon
18 your arrival at the university. We want first-years to have
19 some time to get acclimated academically, socially. So we do
20 not do rush until February when they come back for the spring.

21 Q Now, the summer of 2014 is when Ms. Renda testified
22 before Congress; is that correct?

23 A I believe that's right.

24 Q And during that summer, did you come to learn, Dean
25 Groves, that the Rolling Stone was interested in doing a story

1 about UVa?

2 A I remember being asked this in my deposition. So I can't
3 recall -- I think the university certainly knew in July. I
4 think I'd been shown documents in my deposition, e-mails that
5 indicate that people at the university knew in July.

6 When I knew, I think I would have learned probably from
7 either Nicole or maybe Susan Davis. Someone did tell me at
8 some point, and I've got to think it was late in the summer.
9 But I don't specifically remember.

10 Q And you remember that you learned that fact before you
11 actually got an e-mail about it?

12 A That's possible, yes.

13 Q Let me -- excuse me just a second.

14 A Certainly.

15 MR. PAXTON: If we could bring up Defendants' 5,
16 Defendants' Exhibit 5 previously marked.

17 Dean Groves, let me give -- unfortunately, it may be
18 easier for you to read this. Well, actually, it may be easier
19 on the screen because we can enlarge it. It's very small.

20 THE WITNESS: Yeah, I think the screen is easier.

21 MR. PAXTON: Yeah. But I wanted you to have that.

22 BY MR. PAXTON:

23 Q Do you -- if you scroll down -- if you look down in this
24 e-mail, it begins on Friday, September 5, 2014, an e-mail at
25 11:26 a.m. from Ms. Erdely to Nicole Eramo.

1 Do you see that?

2 A Yes, I do see that.

3 Q Okay. Now, September 5 -- it would have been midday
4 Friday -- would this have been the kind of thing you would
5 expect Ms. Eramo to tell you about when it came in, since she
6 was three doors down from you?

7 A I'm trying to think about that, because today and for
8 some time the practice has been -- in fact, I got an e-mail
9 from the Cavalier Daily yesterday about something unrelated to
10 this. And our standard practice for some time has been to
11 forward those to public affairs, to Anthony de Bruyn. And
12 then Anthony comes back and tells us when we can talk to the
13 press, you know, if he needs to be there, et cetera.

14 I can't recall when that happened. So there was a period
15 of time where I would have expected Nicole to forward this to
16 public affairs. She wouldn't necessarily have to tell me.

17 In this case, though, I do know at some point she and I
18 talked about the fact that Ms. Erdely wanted to interview her.
19 So I know I became aware of this. Whether she got this e-mail
20 and walked down the hall, whether she told me a day or two
21 later, I know I became aware of this.

22 Q And so if we can go to the first page, please, at the
23 bottom of the first page. Yeah.

24 This is a response on Saturday. So it appears that
25 either Ms. Eramo didn't get it until Saturday or she didn't

1 respond. But she responded directly to Ms. Erdely without
2 initially forwarding it to the public relations person, as you
3 indicated.

4 Is that what this indicates to you?

5 A Assuming for the sake of your question that there's no
6 e-mail to show that she did forward it between Friday and
7 Saturday, then, yes, that's right.

8 Q Right. And she indicated an openness to meeting with
9 Sabrina when she came to campus?

10 A Absolutely. She said the same thing to me.

11 Q So if we go to the next e-mail in the chain, please on,
12 Monday, Ms. Erdely responded and indicated if it's not too
13 much of a hardship on your schedule to squeeze her in on
14 Friday, "anytime that's good for you is good for me."

15 Do you recall seeing an e-mail to this effect?

16 A I don't know if I saw the e-mail, but I certainly knew
17 that Ms. Erdely had reached out to Nicole and Nicole was
18 willing and eager to give an interview.

19 Q And then if we go to the next one in the chain.

20 Here in this response on Monday, a little after 1:30, she
21 responds to Ms. Erdely and at this point copies Mr. McCance.

22 Is he in the public relations area?

23 A He is. At this point in time, a man named David
24 Martel was the head of public affairs, and Anthony de Bruyn
25 and McGregor McCance -- I don't know who reported to whom. I

1 think Anthony was more senior than McGregor, but all of them
2 were in public affairs, yes.

3 Q So this is, where she forwarded it on on Monday,
4 consistent with the policy that you've talked about; is that
5 correct?

6 A Yes. She's alerting public affairs that a media request
7 has come in.

8 Q And do you recall, Dean Groves, that after this exchange
9 of e-mails, that Ms. Erdely forwarded a list of questions and
10 topics that she wanted to discuss with Ms. Eramo?

11 A I'm sorry. This piece of it, I just don't have good
12 recall of. I'm sorry. If you want to show that to me.

13 Q Sure.

14 MR. CLARE: Thank you.

15 MR. PAXTON: Sure.

16 THE WITNESS: Do you want Defendants' 153 back?

17 MR. PAXTON: I'll get it from you, yes.

18 MS. MOODY: This will be Defendants' 71.

19 MR. PAXTON: Thank you.

20 BY MR. PAXTON:

21 Q Dean Groves, let me show you what has been marked as
22 Defendants' Exhibit 71, which is an e-mail chain produced in
23 this case from the University of Virginia.

24 A Just for the record, it's got two designations,
25 Defendants' 61 And Defendants' 71. So I'm sorry. I --

1 Q Well, unfortunately, the -- these documents have been
2 marked a lot of different times.

3 A Well, I'm looking at one that has both, so we're on the
4 same page.

5 Q Yeah, yeah. I completely get it. It's very confusing.
6 This case has been going on for a long time. It's been marked
7 at various different points.

8 At the bottom of the -- if we go to the bottom of the
9 first page, there is a September 9, 2014, e-mail from
10 Ms. Erdely, if you look to the -- actually, I take that back.

11 This is an e-mail from McGregor McCance summarizing a
12 discussion that he had had with Ms. Eramo -- with Ms. Erdely.

13 A So the thread that I see from oldest to newest is
14 Ms. Lampkin e-mailing, Mr. McCance responding, Ms. Lampkin
15 e-mailing, and then me.

16 Q Right.

17 A And then Nicole in between. I'm sorry. Yes. I'm sorry.
18 In the thread, which e-mail do you want me to focus on?

19 Q Let's start at the bottom, because Mr. McCance --

20 A Oh, I see, I see.

21 Q Where he was reporting on his conversation.

22 A I'm sorry. I thought that was Ms. Lampkin's e-mail. But
23 you're right. There's one below it that is McGregor McCance.

24 So let me look at that real quickly. This is September 9
25 at 11:17. So he says he's been on the phone with Ms. Erdely,

1 the Rolling Stone writer. She's going to interview Nicole
2 Friday, says it wasn't confrontational or aggressive, and
3 here's a summary of what we discussed, with looks like bullets
4 that didn't format well; that publication would be late
5 October at the earliest.

6 Do you want me to read this?

7 Q No, no.

8 A Oh, okay.

9 Q So for purposes of your testimony, this was an effort by
10 Mr. McCance to let you and others, Ms. Lampkin and others,
11 know what the issues were that Ms. Erdely wanted to talk with
12 Ms. Eramo about; is that correct?

13 A Yes.

14 MR. PAXTON: All right. And, Your Honor, I would
15 move into evidence Defendants' Exhibit 71.

16 THE COURT: 71, without objection.
17 (Defendants' Trial Exhibit 71 admitted)

18 BY MR. PAXTON:

19 Q And I take it you read the fact that Mr. McCance
20 indicated that Ms. Erdely was not confrontational or
21 aggressive; is that correct?

22 A Yes.

23 Q And --

24 A This e-mail thread, while I wasn't on the initial e-mail,
25 it looks like I get added at the very end. So I know I saw

1 this at some point.

2 Q Sure. And, in fact, at the very top of this e-mail
3 chain, at the end of all of these back-and-forths, you
4 actually weigh in on this issue; is that correct?

5 A I do.

6 Q Could you read what you said in your e-mail.

7 A Absolutely. This is on September 9, 2014, at 5:20 p.m.

8 "I'd prefer not to do it at all. In my opinion, RS has
9 not been objective in recent years. The description of
10 hypotheticals, OCR, specific cases, et cetera, leads me to
11 believe this is a hatchet job."

12 Q Now, did you regularly read the Rolling Stone?

13 A You know, in my deposition I joked that everything I
14 refer to as being a couple of years ago, and for me that could
15 be a decade. I have just reached that age in life where
16 everything seems like it was a couple years ago.

17 I did used to read Rolling Stone when I was more engaged
18 in the music scene in terms of following popular music. Now
19 I'm kind of locked into the 1970s and '80s, I think. So I
20 don't really do that.

21 But there were some popular culture-type articles that, I
22 might be in a airport, especially when I was a lawyer and I
23 was traveling a lot and I would see the article and I would
24 think the cover story looked good, so I would pick it and read
25 it.

1 And as I think in my deposition, there were some articles
2 that I remember a few years ago by -- I think his name is Matt
3 Taibbi. And there had been some that I felt were really, kind
4 of to me, slanted and really moving in a way that I didn't see
5 as balanced. So that is what I was referring to here.

6 I was also concerned, when I talk about specific cases
7 and hypotheticals, that one of the problems is Nicole can't
8 talk about any of those cases. Right? So how can this go
9 well if the reporter is going to ask Nicole questions about
10 peoples' cases and Nicole's answer to every one of them is
11 going to be "I can't talk to you about that"?

12 Q She really wanted to talk to them, though, didn't she?

13 A Oh, she did, very much so.

14 Q And the e-mail that you were responding to was from
15 Ms. Eramo saying that she was comfortable talking with her
16 under the guidance noted below, correct?

17 A Yes. And she also walked down to my office and said "I
18 really want to do this."

19 Q And also in that e-mail, she said, "I'm afraid it may
20 look like we're trying to hide something for me not to speak
21 with her."

22 A Yes.

23 Q And so, ultimately, the decision was made not to let
24 Ms. Eramo speak with the Rolling Stone; is that correct?

25 A I believe Vice President Lampkin made that decision, yes.

1 Q And so as of -- certainly as of November 9, you knew the
2 Rolling Stone was coming, a reporter from Rolling Stone was
3 coming to the campus to interview a number of people; is that
4 correct?

5 MR. CLARE: I think you misspoke. You said
6 November. It's September.

7 MR. PAXTON: I'm sorry. September. Thank you.
8 Thank you very much, Mr. Clare.

9 THE WITNESS: And probably earlier. But certainly,
10 yes, certainly, you're right. If you want to put a no later
11 than September 9, that's true. I suspect it was earlier that
12 I knew that.

13 BY MR. PAXTON:

14 Q Right. And you were also aware, were you not, Dean
15 Groves, that there was an interest in doing a feature article
16 in the Virginia Magazine on how UVa was dealing with sexual
17 assault cases?

18 A I came to know that at some point, yes.

19 Q And was -- the UVa magazine is an alumni publication; is
20 that correct?

21 A Again, I'm not an expert on this, but my belief is that
22 it is a publication of the alumni association of the
23 University of Virginia, which is actually a private entity
24 rather than part of the state -- that is, the institution,
25 which is a part of the state. It is actually a private

1 entity.

2 What the legal relationship is between the private entity
3 that is the alumni association and the magazine, I don't know.
4 But I know it's their publication.

5 Q Right. And so there's a friendly relationship between
6 the University of Virginia and its alumni association?

7 A I would hope so, yes.

8 Q Yeah. And so do you recall whose idea it was to suggest
9 to the magazine how the university was dealing with sexual
10 assault might be a good topic for them to cover?

11 A I have no recollection or idea on that. If you have
12 something to show me -- I don't remember being involved at all
13 in that conversation.

14 What I do know is at some point I learned the name of the
15 author -- it's a freelance author -- who was going to write
16 the piece. And she had done an interview and a piece, a
17 profile piece, on me a couple years earlier, and I thought was
18 a good writer and a good person to work with.

19 Q Is that Molly?

20 A No. She was the fact-checker. And I'm sorry. I'm
21 drawing a blank on the reporter's name. I think she lived in
22 San Antonio, if I remember correctly.

23 Q So you were aware that this freelance writer for the
24 alumni magazine was going to interview Ms. Eramo?

25 A I think so. Again, it's been a couple years, but I think

1 so.

2 Q And you knew that they were going to talk with Emily
3 Renda as well?

4 A That, I don't remember as clearly. But I will -- I think
5 in my deposition they showed me an e-mail where they were
6 taking about taking a photo of Nicole and Emily and me. So
7 that means, yes, I had to know.

8 Q Let me -- thank you for mentioning that.

9 MR. PAXTON: Next in order.

10 MS. MOODY: 72.

11 BY MR. PAXTON:

12 Q Dean Groves, let me show you -- again, it's going to have
13 two numbers on it, but the one that counts is the one on top,
14 Defendants' Exhibit 72.

15 A Yes, sir.

16 Q Is this the e-mail that you were shown during your
17 deposition and also you were referring to just now?

18 A To the best of my recollection, yes.

19 Q And do you see -- was the name of the writer Rhonda
20 Saunders? Does that ring a bell?

21 A No. Ms. Saunders is my office manager and also my
22 executive assistant.

23 Q Oh, okay. If you go to the fourth page of this, there is
24 an e-mail from Ms. Saunders to Ms. Eramo, to Burke, and Emily
25 Renda.

1 Who is -- is it a Mr. or Mrs. Burke?

2 A I have no idea.

3 Q Okay.

4 A And if I've offended Mr. or Mrs. Burke by that answer,
5 I'm sorry, but the name doesn't ring a bell.

6 Q That's fine.

7 Do you recall receiving and reviewing this e-mail at some
8 point, knowing that you were going to be contacted about a
9 photo shoot?

10 A It looks like Ms. Saunders was handling this for me. And
11 then at some point, it looks like -- yeah, I was on the chain.
12 I don't know how close attention I was paying to it because
13 Rhonda manages my calendar, which is a pretty difficult task
14 given the breadth of my responsibilities.

15 But, yes, absolutely, I must have known about this, and I
16 would have been relying on Rhonda to figure out when this
17 would work, when the time would work for the schedule.

18 MR. PAXTON: I move admission of Defendants'
19 Exhibit 72.

20 THE COURT: 72, without objection.

21 (Defendants' Trial Exhibit 72 admitted)

22 BY MR. PAXTON:

23 Q And do you recall, Dean Groves, that in addition to
24 setting up this photo shoot, the alumni magazine forwarded to
25 you a draft of the article that they intended to publish?

1 A Yes.

2 Q And that you made some comments on that -- on that?

3 A Yes. My recollection in my deposition was that I had
4 done it in a pen. But they reminded me by showing me the
5 document that I had done a redline, which I don't do much
6 since I'm not a lawyer anymore, but I must have done it on the
7 computer and created a document called a redline, which is
8 where it shows the edits that I'm suggesting.

9 Q And if you can refer to the screen, "The photo shoot here
10 was to support the sexual misconduct story that we're doing
11 for the winter issue."

12 So was that your understanding at the time, October of
13 2014?

14 A Based upon my reading this e-mail today, yes, that must
15 have been my understanding.

16 Q So this was right about the same time that Rolling Stone
17 was doing its interviews and gathering information for its
18 story; is that correct?

19 A They must have overlapped, yes.

20 Q Yeah. And Ms. Eramo was allowed to speak to the UVA
21 magazine but not to Rolling Stone; is that correct?

22 A I believe that's true.

23 Q Let me show you -- again I apologize for the clumsiness.

24 A It's all right.

25 MR. PAXTON: Let's mark both of these.

1 MS. MOODY: 73. 74.

2 MR. PAXTON: There's one for the Court.

3 BY MR. PAXTON:

4 Q Dean Groves, let me show you what -- this has, like,
5 three numbers on it. So it's really confusing. But the one
6 that counts is the one on top, Defendants' Exhibit 73. There
7 you go. And then Defendants' Exhibit 74.

8 A Yes, sir.

9 Q Deposition -- I mean -- I'm sorry. Defendants'
10 Exhibit 73, is that a copy of your markup?

11 A I have to tell you that I have not seen that document
12 since I made it, including at my deposition. I didn't look at
13 it other than them refreshing me by saying this is a redline
14 that you did. And I said, "Okay. I must have done it on the
15 computer."

16 Q But you do --

17 A I did a redline.

18 Q Yeah, you did a redline.

19 A Yes.

20 Q And let me mark this as another exhibit.

21 MS. MOODY: 75.

22 BY MR. PAXTON:

23 Q Let me show you an e-mail chain that's marked Defendants'
24 Exhibit 75. Unfortunately, it is a small type.

25 A I see this.

1 Q And is it your recollection of this time period, in --
2 let me say, the e-mail, if you look at Defendants' Exhibit 75,
3 on the second page, you'll see an e-mail from a Molly Minturn
4 to you.

5 Do you see that?

6 A I do.

7 Q Okay. And it says, "Dear Dean Groves: Thank you very
8 much for your help with our feature on sexual assault at UVA.
9 Here is my story for your review."

10 And the date of that was October 27, 2014?

11 A Yes.

12 Q So is it accurate that you received a copy of the draft
13 article on October 27, 2014?

14 A Looking at this exhibit, that must have been the date,
15 right.

16 Q And then the next e-mail in that exchange was your
17 response to her; is that correct?

18 A Yes. And I'm saying a copy containing my suggested edits
19 is attached. "The redline didn't save, but I have a hard copy
20 if you need it."

21 What that means is I was trying to save the redline and
22 then send that to her, it would show the changes, but I
23 couldn't get it to save. And so I sent her a clean copy that
24 contained my edits and said, "I have a hard copy of the
25 redline if you want to look at that and see where I made the

1 changes."

2 Q And to the best of your knowledge today, is Defendants'
3 Exhibit 73 -- which is a very poor copy, unfortunately -- your
4 edits to that, to that document?

5 A Yes. I take your representation that we produced this
6 and that is what it is. I absolutely remember making what I
7 called suggested edits, because that's what I perceived, was
8 that she was giving me the chance to make suggestions, that I
9 did that, and that this redline reflects those suggested
10 edits.

11 MR. PAXTON: Your Honor, I would move the admission
12 of Defendants' Exhibits 75 and 73.

13 MR. CLARE: Your Honor, I'm not sure that -- the
14 relevance of this entirely separate publication to the issues
15 in this case, a magazine article that is not the Rolling Stone
16 article. But with that notation, I guess I would object on
17 the grounds of relevance.

18 MR. PAXTON: Your Honor, I'll be able to connect
19 that pretty quickly, I believe.

20 THE COURT: Well, maybe and maybe not. I think
21 generally it falls under the category of the dean's
22 observation that, you know, the university is subject to
23 criticism, it's subject to review, it's subject to comment.
24 And, obviously, they cooperated in a process by which that
25 review, that comment, that criticism occurred.

1 So to that extent, I think it's reasonable and
2 relevant to have it as part of the record.

3 MR. PAXTON: Thank you, Your Honor.

4 MS. MOODY: So which two did you move in?

5 MR. PAXTON: 73 and 75.

6 MS. MOODY: Okay.

7 BY MR. PAXTON:

8 Q And if you would look at Defendants' Exhibit 74 for a
9 moment, this is a similar e-mail to Nicole Eramo produced by
10 the University of Virginia to the one -- the e-mail that you
11 originally received from Molly Minturn on October 27, 2014.
12 Does it look like those e-mails are virtually identical,
13 forwarding her a copy of the article?

14 A Oh, yes. I see what you're saying now. Yes, the Exhibit
15 74, the e-mail from Molly Minturn to Nicole, looks very
16 similar to the e-mail that Molly had sent to me forwarding the
17 article, yes.

18 Q Right. That was my point.

19 A Yes.

20 Q And so was it your understanding that the people that
21 were involved in this article were sending an advance copy or
22 draft to comment?

23 A I don't know that I knew Nicole had been sent a copy,
24 because I wasn't copied on this, but I certainly knew that I
25 had, and I knew that at some point in the process Susan Davis

1 and Pat Lampkin had a copy of it.

2 Q If you would compare Defendants' Exhibit 73, which is
3 your draft, to Defendants' Exhibit 74, 74 is a lot easier to
4 read the attachment -- the attachments to Defendants' Exhibit
5 74 --

6 A Yes.

7 Q -- the actual article itself.

8 A Yes.

9 Q Take just a minute to compare the article that you edited
10 and the one that was sent to Ms. Eramo.

11 A I'm doing it by simply looking at the first couple of
12 words of each paragraph?

13 Q That's fine. Right.

14 A I'm not reading every word, but it looks to be the same
15 article.

16 MR. PAXTON: Your Honor, we would move Defendants'
17 Exhibit 74 into evidence, actually, just to make it a little
18 easier for the witness to read the article that was sent to
19 UVa for comment.

20 THE COURT: Okay.

21 MR. PAXTON: Thank you.

22 THE COURT: Admitted as 74. So have you moved all
23 three of these?

24 MR. PAXTON: We have, Your Honor.

25 THE COURT: All three are admitted as identified by

1 the witness, 73, 74, and 75.

2 (Defendants' Trial Exhibits 73, 74 and 75 admitted)

3 MR. PAXTON: So if we would put up 74, which is
4 DTX39, the second page.

5 BY MR. PAXTON:

6 Q So the title of this draft article was "Sexual assault at
7 UVa. What will it take to keep students safe at the
8 university?"

9 Do you see that was the draft of the article?

10 A Yes.

11 Q And if you see on the screen, the last paragraph that's
12 shown on the screen says, "At UVa and across the country, an
13 upswell of outraged college students, parents, activists, and
14 even the White House are now demanding to know: How can this
15 be a typical experience at our nation's institutions for
16 higher education?"

17 Do you see that?

18 A Yes.

19 Q And this was referring to the beginning of this article,
20 in which Emily Renda recounted her own experience at UVa
21 during her first year here; is that correct?

22 A Yes.

23 Q And you were aware of Emily Renda's account, that she had
24 met a guy at a fraternity party, she had gotten drunk, and
25 that she had been sexually assaulted that night; is that

1 correct?

2 A Yes. I don't believe she brought that forward at the
3 time it happened. I think it was a couple of years later that
4 she brought that forward. But, yes, I was aware of Emily's
5 account and Emily's recitation of her experience as a
6 first-year, yes.

7 Q And you were also aware, as this article indicated, that,
8 in recalling that night from October 7, 2014, Renda used the
9 word "typical"? "And in my case, it's a fairly typical campus
10 sexual assault story"; is that right? Right above?

11 A Oh, yeah. She's saying typical of a sexual assault story
12 on a college campus, yes.

13 Q And that was one of the reasons that she went to Congress
14 to testify, was to talk about her story and others, about the
15 experience that young women were facing on college campuses;
16 is that correct?

17 A Yes.

18 Q Now, if you go down in that same article that I read to
19 you to begin with, the last sentence in this paragraph says,
20 "And what are UVa and other universities doing about it?"

21 So that was a question that was being posed, correct?

22 A Correct.

23 Q And then the next paragraph says, "And at UVa in
24 particular, the following questions are echoing louder and
25 louder across the grounds: Why is it that no student has been

1 expelled for rape in modern university history?"

2 A I see that, yes.

3 Q "Why is sexual assault not part of the university's
4 revered honor code?" Right?

5 A Yes.

6 Q And not to take you back to a sensitive spot, but it
7 says, "In the wake of UVa second-year Hannah Graham's death in
8 September, what are the administrators doing to keep students
9 safe?"

10 A Yes.

11 Q So all of this information was accurate, was it not?

12 A Sentence one and sentence -- well, sentence one is an
13 accurate statement. Sentence three is a question.

14 Q Right.

15 A And sentence two, there are reasons why it is not part of
16 the honor code. But it simply makes a statement -- it's
17 another question. "Why is it not part of the honor code?"
18 Yes.

19 Q And there's been some testimony in this case about an
20 interview that Dean Eramo gave to WUVA institution. What is
21 WUVA?

22 A My understanding is WUVA is a primarily student-run radio
23 station.

24 Q And were you aware that in early October -- actually,
25 maybe even in September, that Dean Eramo had had an occasion

1 to sit down with a student from the radio station and give an
2 interview about the university's sexual assault policies and
3 how they were implemented?

4 A Well, as you've probably read in my deposition from last
5 spring, at the time, my understanding was that Nicole said a
6 student had contacted her. And the student said for a class
7 project, that the student wanted to do an interview, that
8 Wyatt Andrews -- who is an alum of the university and a
9 well-known newscaster -- would then critique the student's
10 case studies or examples of how they interviewed somebody on
11 an important topic.

12 I don't think Nicole or I -- and mine was based on what
13 Nicole was telling me at the time -- perceived that it was
14 going to be a WUVA interview. Nicole perceived that it was a
15 class project. And I had no problem with her working with a
16 student on a class project. The student identified herself as
17 being associated with WUVA, but Nicole's understanding --
18 which then was conveyed to me by Nicole -- was that it was a
19 class project, yes.

20 MR. PAXTON: I understand -- I think we've been
21 asked to take a break at this point.

22 THE COURT: If it's a convenient point.

23 MR. PAXTON: I think we can stop here and I can pick
24 back up at this point.

25 THE COURT: Ladies and gentlemen, we'll have our

1 first midmorning break. I would ask that while you're away
2 from the court, do not discuss the matter with one another, do
3 not permit anyone to discuss it with you. I'll ask the
4 witness not to discuss pending testimony with counsel from
5 either side.

6 Let's plan to return at about ten until 10.

7 Ask the marshal to declare court in recess.

8 (Recess)

9 (Jury in)

10 (Open court as follows:)

11 THE COURT: JoRita can report that all ten jurors
12 are back in their places, ready for the continuation of the
13 cross-examination of the dean.

14 Mr. Paxton, you may proceed.

15 MR. PAXTON: Thank you, Your Honor.

16 BY MR. PAXTON:

17 Q Dean Groves, when we broke, I was asking you about the
18 WUVA interview that Ms. Eramo gave to the campus radio
19 station.

20 Do you recall that?

21 A To that student, yes.

22 Q Yeah.

23 A Yes.

24 Q And you did become aware that that interview, then, was
25 broadcast on campus, a portion of it?

1 A You know, I was asked that question in my deposition.
2 And I can't remember that. I know there's no question that,
3 after the Rolling Stone article ran, I saw a live link to the
4 WUVA broadcast that you could click onto and watch it. And I
5 think I either saw or was told that CNN may have run a portion
6 of it. You know, so it got wide exposure at that point.

7 I know that -- I don't think I saw it before the article
8 ran. But I certainly, again, was aware that it had happened,
9 that Nicole had given this interview to this student, yes.

10 Q And from the nature of your responses to my initial
11 questions, it sounds as if at least Ms. Eramo told you that
12 she felt like she had been somehow misled about the nature of
13 the interview before she gave it?

14 A I can't remember when she told me that, but she did tell
15 me that at some point, yes.

16 Q And she was concerned about the way that it made the
17 university and her look based on the information that she had
18 shared during that interview?

19 A I think that was the takeaway that I had from her
20 conversation with me, yes.

21 Q And isn't it true that during that conversation the
22 student asked her about the number of people that had been
23 expelled for sexual assault?

24 A I believe so, yes.

25 Q All right. And so that was the occasion when the campus

1 learned that no one had been expelled from the university for
2 sexual assault. Would that be fair?

3 MR. CLARE: Object to foundation in terms of when
4 the campus learned certain facts.

5 MR. PAXTON: I can rephrase.

6 THE COURT: That would be fine.

7 BY MR. PAXTON:

8 Q This article indicates -- that's in front of you, that --
9 in the paragraph that's highlighted, it says, "At UVa in
10 particular, the following questions are echoing louder and
11 louder across grounds: Why is it that no student had been
12 expelled for rape in modern university history?"

13 Are you aware of any other information other than
14 Ms. Eramo's interview with WUVA that made that information
15 known to the campus?

16 A I believe it's possible that Ms. Russell's website had
17 said that, but I'm not sure. I know I had asked the question
18 at some point.

19 And if I may elaborate just a little bit.

20 Q Go ahead.

21 A The system at UVa is highly unusual relative to other
22 schools because the deans -- and in particular the dean of
23 students -- doesn't have the authority to discipline students.
24 The system at UVa is run by a student discipline system, what
25 we call student self-governance.

1 So the schools of the university elect students to serve
2 on the honor committee, which is lying, cheating, and
3 stealing. And the schools of the university elect students to
4 serve on what's called the university judiciary committee, the
5 UJC, which covers the 12 standards of conduct. The first is
6 physical assault. The second is, I think, recklessness,
7 violation of law, those kinds of things.

8 And there is a subset -- and this comes from the board of
9 visitors. And there was a subset of the UJC in those days
10 that was called the sexual misconduct board, the SMB. And it
11 was made up half of students and half of faculty and staff who
12 were trained specially each year to hear those cases. And it
13 was that board, just like the UJC and the honor committee,
14 that actually issued the sanction.

15 And so I know at some point during the time I was dean, I
16 did ask the question, had -- because it had been raised in
17 some context -- and it might be Ms. Russell -- had there been
18 an expulsion for sexual assault?

19 Honor committee, there's only one thing they can do is
20 expel. Right? If they find a student guilty, they must
21 expel. There's no other option.

22 And the answer was no.

23 And so I know I saw that somewhere; I just don't know
24 where.

25 MR. PAXTON: Next in order?

1 MS. MOODY: 76.

2 BY MR. PAXTON:

3 Q Dean Groves, let me show you an e-mail exchange, which,
4 again, has a couple of numbers on it. The one that counts is
5 Defendants' Exhibit 76 at the top, which is an e-mail chain
6 that includes yourself.

7 Have you had a chance to review this?

8 A I'm just looking at the bottom of the exhibit to see when
9 the first e-mail was. I see it's Ms. Minturn at the alumni
10 magazine to me -- no. It looks like Ali Burke. Ms. Burke is
11 an art director. I see that now in this exhibit. You asked
12 me about that person earlier. I don't know that person, but I
13 see the name here.

14 So, yes, I see this.

15 Q And is this an e-mail exchange that you had with the UVa
16 magazine about certain information they intended to include in
17 the article?

18 A Let's see. The first e-mail is them asking questions.

19 The next e-mail, October 13, I'm responding that I can't
20 confirm all of those numbers, the 183 expulsions, et cetera,
21 as it's beyond my knowledge, copying Nicole, who may know.

22 Let's see. "With respect to the purported Rolling Stone
23 article and allegations against unnamed current or former
24 members at Phi Kappa Psi fraternity, I can state the
25 following: We will always investigate allegations of sexual

1 assault if provided enough specific information to do so."

2 What I was saying is -- I was saying in this response to
3 Ms. Minturn, and now I'm copying Nicole, Vice President
4 Lampkin, and Anthony de Bruyn in public affairs, that I can't
5 confirm the 183 honor expulsions since 1998 because I simply
6 don't know the answer, and that I was copying Nicole, who may
7 know, because she had been the special assistant to the honor
8 committee before she became an assistant dean.

9 And then I then say that, "With respect to the purported
10 Rolling Stone article and allegations against unnamed current
11 or former members of the Phi Kappa Psi fraternity at UVA, I
12 can state the following: We will always investigate
13 allegations of sexual assault if provided enough specific
14 information to do so."

15 And Nicole then responds that, "The statistics recorded
16 in the WUVA story are correct, to my knowledge."

17 MR. PAXTON: So, Your Honor, I would like to move
18 Defendants' Exhibit 76 into evidence.

19 THE COURT: 76, without objection.
20 (Defendants' Trial Exhibit 76 admitted)

21 BY MR. PAXTON:

22 Q Now, Dean Groves, let's go back to the first e-mail that
23 you got from Ms. Minturn. She actually sent you a link to the
24 WUVA interview that was shown on campus; is that correct?

25 A Yes. I think I told you earlier I remembered at some

1 point seeing a live link somewhere. And this must have been
2 it.

3 Q Okay. So at this point at least, Ms. Minturn was aware
4 that allegations against members of the Phi Psi fraternity
5 that would be covered in the Rolling Stone article; what is
6 UVa's response to that?

7 So this appears to have been a fairly open issue on
8 campus as of October 13, 2014?

9 A I don't know how open or widespread the knowledge was in
10 the university community generally. It's clear that the
11 reporter for the alumni magazine and Ms. Minturn as an editor
12 know this. As I told you earlier, I certainly knew this. How
13 widespread it was beyond that, I don't know.

14 Q And in connection with the first bullet point, where she
15 provided a link to the WUVA report, the reporter stated that
16 there had been 183 expulsions for the honor code violations
17 since 1998. She also states that "According to Pat Lampkin,
18 no one has ever been expelled from UVa for sexual assault.
19 Can you confirm that?"

20 So this information about no expulsions was a topic that
21 was being discussed in October of 2014, correct?

22 A Yes.

23 Q And, in fact, as we've seen, the article -- the draft
24 article specifically references that?

25 A Yes.

1 Q And they contrasted it with the fact that honor code
2 violations have been treated more severely, correct?

3 A Yes.

4 Q And that's for the reasons that you've previously stated?

5 A Yes, that the honor committee only has one option, which
6 is expulsion.

7 Q So let's go back to the deposition -- I mean -- I'm
8 sorry -- Defendants' Exhibit 74, which is the clean article,
9 clean version of the article.

10 A Yes, sir.

11 Q And we'll go down to the paragraph that begins,
12 "Survivors" -- where it says, "Survivors of sexual assault are
13 playing a large role in trying to change the culture on
14 grounds. No longer willing to remain anonymous, Renda and
15 others are speaking out at rallies, at fraternity house
16 meetings, and via social media. They're sharing their
17 experiences in very public ways to inform and educate
18 first-years who are on their own for the first time."

19 Do you see that?

20 A I do.

21 Q Now, if you compare that version with Defendants'
22 Exhibit 73, it appears that you made an edit to the second
23 sentence of that that says "no longer willing to remain
24 anonymous," where you struck that out?

25 A Yes.

1 Q Why did you do that?

2 A That, I remember.

3 Because I thought that would shame or pressure some women
4 and men who did want to remain anonymous. In other words, it
5 would create the impression that, if you made an anonymous
6 report, that somehow you were not part of this movement to try
7 to enact change. And I did not want a student to feel like he
8 or she could not make an anonymous report.

9 Q And so you were hoping -- but that was -- that -- the
10 writer of the article had the perception that Ms. Renda and
11 others, that's what it was referring to, were no longer
12 willing to remain anonymous. Is that the way you read that
13 sentence?

14 A That's one way to read the sentence, yes. I just was
15 worried -- I remember this particular edit.

16 I was worried about the fact that it might create in the
17 mind of a student that they couldn't or shouldn't be anonymous
18 if that was the way they wanted to approach it.

19 Q And then the next paragraph down is a quote from Emily
20 Renda. "Sharing your story, owning it personally, and being
21 honest and frank about it gives permission to other people to
22 be honest and frank, said Renda."

23 Do you see that?

24 A Yes.

25 Q And you didn't make any change to that, to that

1 paragraph, in your edits?

2 A It doesn't appear that I did, no.

3 Q Right. Now, this article that the Virginia alumni
4 association was preparing to publish never got published, did
5 it?

6 A No, not to my knowledge.

7 Q And the reason it didn't get published is because you,
8 Susan Davis, and Pat Lampkin decided it needed to be killed;
9 isn't that correct?

10 A No, I didn't decide anything of the sort. I provided
11 these suggested edits back to Ms. Minturn.

12 I know that it ultimately was killed. I know that -- or
13 didn't run. I know that Ms. Lampkin talked with me about
14 that. I think Ms. Davis was involved in those conversations.
15 And I know it did not run.

16 Q Well, if we turn back to Defendants' Exhibit 75, the
17 e-mail exchange, you in your -- at the bottom of page 1, where
18 you attach your -- that's the wrong one.

19 It is DTX40. Sorry.

20 A Yes. I have 75 in front of me.

21 Q It's actually, yeah, Exhibit 75.

22 And in responding to the fact-checker for the alumni
23 magazine, you copied Susan Davis and Pat Lampkin on your
24 response.

25 Do you see that?

1 A And Nicole, yes.

2 Q Right. And the response from Ms. Davis was, "I don't
3 believe we can or should include someone's case. Let's
4 discuss before this goes to press."

5 So was there a discussion that took place between you and
6 Ms. Davis and Ms. Lampkin about this?

7 A As I said, I know that I talked to Ms. Lampkin about it
8 at some point after I had submitted my edits. I know that
9 Ms. Davis and I talked about it. Whether the three of us met,
10 I don't know. I definitely remember this e-mail chain -- this
11 e-mail thread, rather.

12 Q And Ms. Davis followed up with you the second time, just
13 a few minutes later, saying, "Let's huddle on this article.
14 There's something privileged. If this is a must-do, it needs
15 to be substantially revised. We need to lose all of the blank
16 section and everything on sanctioning. This reads as if we
17 are not compliant with Title IX, even though we are."

18 Do you recall that?

19 A I recall all of this, yes. As I say, I recall that I got
20 the draft article from Ms. Minturn, that I did a redline
21 saying here are my suggested edits since you've asked for my
22 thoughts, and submitted those to her; that this e-mail
23 exchange happens, where Ms. Davis says I'm not sure this
24 should run at all.

25 And you can see what follows in the e-mail thread.

1 Q So let's go to next one. You're responding to Ms. Davis
2 at this point?

3 A Yes.

4 Q And so you made sure that they had a copy of your
5 attached edits. And you say, "I defer to Susan, but if it is
6 to be killed or modified, they said it must be done by
7 Wednesday, which would be October 29."

8 Is that correct?

9 A Yes. They must have given me a date by which I was
10 supposed to submit edits, and that's what I'm referring to
11 here. And I wouldn't have edited the article if I was trying
12 to kill it, I guess is my point to you.

13 Q Right. And so the next -- so if I understand you -- so
14 if you were editing it, you felt comfortable with the content
15 of the article at that point?

16 A Again, as you can tell from what we've gone over so far,
17 I viewed this as the alumni magazine saying to me, here's a
18 draft of the article. Do you have any thoughts about it?

19 I responded and said, thank you for asking for my
20 thoughts. Here are my suggested edits in the attached.

21 My assumption was that it was going to run.

22 Q Right. And so -- I mean, they asked for your input as
23 the dean of students of the University of Virginia, correct?

24 A Yes.

25 Q And so the next part of this e-mail exchange with Susan

1 Davis and you and Ms. Lampkin is that she agreed with your
2 edits and that she voted to kill it, "but if that is not going
3 to fly, we need to modify it substantially."

4 And so it's your understanding that, after this e-mail
5 exchange, Pat Lampkin decided to kill this article; is that
6 correct?

7 A I wasn't part of the conversation that ultimately must
8 have taken place between Ms. Lampkin and Alumni Hall, but,
9 yes, that's my understanding, is that Ms. Lampkin ultimately
10 said to them I don't think this should run. And she may have
11 said what Susan says here, that, if so, it needs to be
12 modified.

13 But I know it never ran.

14 Q And isn't it true, from your interactions from
15 Ms. Lampkin, that you understand the reason she killed this
16 article was because she didn't like the tone of the article?

17 A I don't have a very clear --

18 MR. CLARE: Your Honor, object. That calls for
19 hearsay.

20 THE COURT: Right. I think it calls for some
21 speculation as to what was in someone else's mind or how the
22 decision process unfolded. I'm not sure that he's qualified
23 to give an answer as to that question.

24 MR. PAXTON: Okay. That's fine.

25 BY MR. PAXTON:

1 Q But just to conclude this, this article, which raised a
2 number of questions about what the university was doing to
3 protect campus safety in this particular area of sexual
4 assault, was never published by the Virginia alumni magazine;
5 isn't that true?

6 A Yes. To my knowledge, that's right. I get the alumni
7 magazine, and I never saw it.

8 MR. PAXTON: Now, what I'd like to do -- if we can
9 bring up Defendants' Exhibit 45, which is the 2011 sexual
10 misconduct policy for the University of Virginia.

11 BY MR. PAXTON:

12 Q And, Dean Groves, let me give you a printed copy. It's
13 easier for you.

14 A Thank you.

15 Q Earlier in your testimony you indicated that in 2011, I
16 believe, there was a Dear Colleague letter that came out; is
17 that correct?

18 A April of 2011, yes.

19 Q And this policy, if you turn to the last page, was signed
20 by President Sullivan on July 8, 2011?

21 A Yes.

22 Q Is that her signature?

23 A Yes.

24 Q And so this policy was developed after you got the new
25 guidance from the federal government about how colleges should

1 respond to reports of sexual misconduct; is that correct?

2 A Yes.

3 Q Sexual -- yeah, sexual misconduct.

4 And sexual misconduct is a very broad term under this
5 policy; is that correct?

6 A It encompasses many types of prohibited activity, yes.

7 Q Do you know if the word "rape" appears anywhere in this
8 policy?

9 A I don't know.

10 Q Your job, as the dean of students, was to make sure that
11 this policy was implemented; is that correct?

12 A Yes. I would say that was one of the roles I played, was
13 assisting others in the university in ensuring that the policy
14 was disseminated and implemented. Yes.

15 Q And during the time that this policy was in effect, which
16 I believe was from July 8, 2011, until March 30, 2015, when
17 the interim policy was adopted, you were designated as the
18 deputy Title IX coordinator for student matters; is that
19 correct?

20 A That is correct. During that time frame, yes.

21 Q And so while you were not the day-to-day person
22 implementing this policy, you were expected to understand this
23 policy and know its provisions; is that correct?

24 A Yes, absolutely.

25 Q And you had some involvement in helping to prepare this

1 policy?

2 A Limited. Susan Davis was the expert in student affairs.
3 She's also a lawyer on this area. I believe Susan drafted the
4 policy, vetted it with the general counsel's office. I know I
5 saw a draft at some point before it became finalized. So my
6 role would have been looking at a draft once Susan had put it
7 together and vetted it.

8 Q And you're a lawyer as well, correct?

9 A I am.

10 Q So if you turn to page 2 of the policy in the second
11 paragraph, it says, "As a recipient of federal funding" --

12 Sorry. Help me get this off here. Okay. Thank you.
13 I'm not very technologically adept.

14 "As a recipient of federal funds, the university is
15 required to comply with Title IX of the higher education
16 amendments of 1972 Title IX."

17 Is that your understanding? Is that correct?

18 A Oh, yes.

19 Q And so the last sentence says, "University of Virginia is
20 committed to providing programs, activities, and an education
21 in an environment free from sexual discrimination."

22 Is that correct?

23 A Correct.

24 Q And so this policy, then, undertakes to lay out how
25 that's going to occur; is that right?

1 A I'm only hesitating for a moment because the office --
2 now it's called Office of Equal Opportunity and Civil Rights,
3 but it used to be called OEP, Equal Opportunity Programs.

4 There are aspects of sex discrimination that are within
5 their purview under things like Title VII, for example, for
6 employment.

7 There are a variety of other parts of the university that
8 are also concerned about nondiscrimination in the area of
9 gender, but this policy was an important part of that in
10 particular in complying with our obligations under Title IX.

11 Q And it was -- Title IX addresses students in particular,
12 correct?

13 A Yes. Higher education opportunities. Yes.

14 Q And so this was the university's policy on this issue?

15 A On Title IX, yes.

16 Q Right. And so if you'll turn to page 5 of the document
17 with me about jurisdiction.

18 Now, one of the provisions of this policy -- I'd like you
19 to help me understand a little bit. It appears from
20 paragraph 1 that, if a student that was involved in committing
21 an act of sexual misconduct graduated, the university no
22 longer had jurisdiction over them.

23 Is that how you understand paragraph No. 1?

24 A Yes.

25 Q Okay. So if you got a complaint about a student who was

1 a fourth-year student in January, prior to graduation in May,
2 if no charge was filed and nothing was done prior to
3 graduation, you would lose the ability to address that with
4 that particular student; is that correct?

5 A Yes. Unless a hold was put on their record to
6 essentially hold their degree from being issued, that's right.
7 Once a student graduates from the university or otherwise
8 leaves the university, we would not have jurisdiction over
9 them under this policy because they would not be a student
10 matriculating at the university.

11 Q But in terms of geography, the next section, "This policy
12 applies regardless of where the student is."

13 So the fact that an assault happened in a fraternity
14 house on Rugby Road, which is not on campus property, that was
15 still covered by this policy, correct?

16 A Yes. And I think -- I'm trying to wrack my brain, but I
17 think that was one of the changes in 2011. Nicole would know
18 better than I would, but I think there used to be a geographic
19 limitation, as there are in the other standards of conduct.
20 Some of them say Charlottesville and Albemarle County, for
21 example, that we have jurisdiction over things that happen in
22 that area.

23 But this policy, I know, was made extremely broad so that
24 we could cover things that happened in California, in Austria
25 during study abroad; that we could have jurisdiction over

1 anything that happened with students under this policy.

2 And if I remember correctly, we also eliminated any kind
3 of statute of limitations, meaning that you had to bring a
4 claim -- like, the UJC, it's 45 days you have to bring the
5 claim. I think honor, it used to be a couple years.

6 But this policy was made any time until that student
7 graduates, you could bring a charge forward.

8 Q And so, for instance, if a student was sexually assaulted
9 in September of 2012 and didn't contact the dean's office
10 until May of 2013, that was perfectly acceptable under this
11 policy, correct?

12 A That has happened. We have had cases brought during
13 fourth year alleging misconduct during the first year, yes.

14 Q And then if you return with me, if you could, to page 7.

15 And just for reference, if you turn back to page 6 just
16 so you can see.

17 Subsection E of this part of the policy talks about the
18 effect of criminal prosecution.

19 Do you see that?

20 A I do.

21 Q And because sexual misconduct can be both a violation of
22 Title IX as well as criminal activity, there are certain
23 situations where the police may have an interest in the matter
24 if the student moves the case forward; is that correct?

25 A There are cases where the police might have an interest

1 as well as the university have an interest?

2 Q Yes.

3 A Absolutely.

4 Q And if you turn to the next page, it's also true, if you
5 look in this top paragraph, where it says "in other words,"
6 one of the things that's different between -- this is before I
7 ask a specific question regarding this. One of the things
8 that's different -- and you mentioned this a little bit
9 earlier -- different standards of proof, correct?

10 A Correct.

11 Q So in a criminal case, the prosecution, the government,
12 has to prove beyond a reasonable doubt that someone has
13 committed a crime; is that right?

14 A That is right.

15 Q And in the student arena, under this policy, the student
16 would only need to prove by preponderance of the evidence that
17 the person had engaged in sexual misconduct?

18 A That's correct.

19 Q And so even if a law enforcement agency lacks sufficient
20 evidence of a crime and declined to prosecute, this didn't
21 mean that the university was relieved of its own obligation to
22 investigate the matter and take appropriate action; is that
23 correct?

24 A Yes.

25 Q And if we go to the next paragraph in this policy.

1 The last paragraph there says, "The filing of a
2 complaint," which would be a formal process under this policy
3 for disciplinary action; is that correct?

4 A I'm sorry. Come again, please.

5 Q Well, I'll read the first sentence for you, and then I'll
6 ask you a question. That's simpler.

7 "The filing of a complaint of sexual misconduct under
8 this policy is independent of any criminal investigation or
9 proceeding; and, except that the university's investigation
10 may be delayed temporarily while criminal investigators are
11 gathering evidence, the university will not wait for the
12 conclusion of any criminal investigation or proceedings to
13 commence its own investigation and take interim measures to
14 protect the complainant and the university community, if
15 necessary, as described below."

16 A Yes.

17 Q Okay. So my question to you is: The university's
18 obligation to conduct its own investigation was completely
19 independent as to whether or not a criminal charge was brought
20 where there was a pending criminal investigation; is that not
21 true?

22 A Depending on the amount of information the university had
23 available, but, yes, that is right.

24 And that was something that was new in the 2011 guidance
25 that would then be fleshed out in much greater detail in the

1 April 29, 2014, guidance.

2 Q Right. And then if you'll turn with me to the next page
3 of the policy, on page 8 -- well, let's back up. Let's
4 start -- okay. So you have -- just below that, you have the
5 process initial steps, and there's number A is intake meeting
6 with the complainant; then B, complainant wishes.

7 Intake meeting with the complainant; B is complainant
8 wishes to pursue formal or informal resolution; and then on
9 the next page, in Section C, complainant does not wish to
10 pursue resolution or requests confidentiality.

11 So those -- and then -- so those were the two primary
12 situations that the university could do. The student would be
13 told their options: That they could file a formal complaint;
14 they could ask for an informal resolution; or they could do
15 nothing about it, other than maybe get some counseling, if
16 they didn't really want to pursue disciplinary action towards
17 their assaulter. Is that correct?

18 A Yes.

19 Q And that was the university's approach to make sure the
20 student understood all their options that were available to
21 them. And if a student elected to do nothing in the sense of
22 not pursuing a charge either with the police or with the
23 university's disciplinary process, they were not criticized
24 for that, were they?

25 A If a student chose not to participate or to assist us, we

1 did not criticize them. Is that the question?

2 Q Uh-huh.

3 A Yes.

4 Q And it was perfectly their choice?

5 A Yes. My understanding -- and Nicole had a greater
6 expertise than I in this. But my understanding from the
7 literature was that it was important to give a survivor of
8 sexual assault the ability to control aspects of the process
9 as part of what were considered best practices. At least
10 that's what I had read in the literature.

11 Q So in Subsection C, the policy specifically contemplates
12 that situation; is that correct?

13 A It does.

14 Q And so if you'll read along with me, it says, "If the
15 complainant does not wish to pursue formal or informal
16 resolution and/or requests that his or her complaint remain
17 confidential, Title IX nevertheless requires the university to
18 investigate and take reasonable action in response to the
19 complainant's information."

20 A Yes. And as the next sentence says, "However, the
21 university's ability to respond may be limited."

22 Q Correct. So one of the things you mentioned now, the
23 frequently asked questions or the Q and A that came out in
24 April 2014, part of that guidance was that universities needed
25 to do more in the area of investigation than what they had

1 been doing under the law; is that correct?

2 A Yes. I think there were about -- that section -- I can't
3 remember the letter; I think it may have been E, but in a
4 section there were about four hypotheticals or -- I'm going
5 back on memory.

6 Q Right.

7 A There were about four hypotheticals where they said, if
8 you have a situation where the young person doesn't want to
9 participate, doesn't want to make a complaint, isn't willing
10 to assist, what are some of the options available to a
11 university?

12 For example, one was to conduct targeted training. If
13 there's an area where you think or a group where you think a
14 problem exists, training might be an option. Another was to
15 investigate to the extent that you have information. But they
16 gave several hypotheticals.

17 Q And so -- but if you look at your policy, isn't it true
18 that, at a minimum, the university -- it says, "Title IX
19 nevertheless requires the university to investigate," correct?

20 A Yes.

21 Q That's a mandate?

22 A Yes.

23 Q And then the second half of the sentence is "and then to
24 take reasonable action in response to the complainant's
25 information."

1 A Yes.

2 Q And so the second part of this policy makes it clear that
3 there's some judgment about what's reasonable and what's not;
4 is that correct?

5 A Yes, I would suppose so.

6 Q As contrasted with a mandate to do an investigation
7 that's required?

8 A Yes, that's what our policy says.

9 Q And so, as you understood it, this was the University of
10 Virginia's attempt to comply with Title IX, by adopting this
11 policy?

12 A Yes.

13 Q Okay. And so different people might have different
14 reactions to what a reasonable response would be in this
15 situation. Isn't that contemplated by this policy?

16 A That reasonable people could disagree?

17 Q Yeah.

18 A Yes.

19 THE COURT: In fact, you understand there's been a
20 lot of disagreement about that very provision?

21 THE WITNESS: Yes, sir.

22 BY MR. PAXTON:

23 Q And at this point, under this policy, it's your
24 understanding that this policy was designed to reflect the
25 sort of a victim's choice approach to how the university would

1 respond? In other words, if the student really didn't want to
2 go forward, the university was going to try to honor that
3 request as much as possible?

4 A I believe that to be generally true. I know in that
5 April 29, 2014, guidance the government talked about the
6 balancing of the interests and the fact that there was
7 importance to empowering survivors to feel like they had
8 ownership of the process but also to balance that against
9 other factors.

10 And that led to our development, I think in the winter of
11 2015, 2014-'15, to this list of factors and an evaluation
12 panel that we now used to balance those factors.

13 Q In fact, wasn't that policy adopted by the University of
14 Virginia on August 26, 2014, just before the start of the new
15 school year?

16 A I'm sorry. I don't remember the date, but I know there
17 was this policy; then there was an interim policy put in after
18 the guidance in April 2014; and then a final policy that is
19 the one we have now. I think that was maybe in July after
20 that. But I can't remember the time line.

21 MR. PAXTON: Excuse me one second.

22 (Counsel conferring)

23 BY MR. PAXTON:

24 Q I'll come back to that --

25 A That's fine.

1 Q -- to help refresh your recollection. I don't have it
2 handy; I don't want to hold us up at this point.

3 Let's go to the situation involving Jackie, if we can.

4 A Yes, sir.

5 Q And if I use the word "Jackie," you know who I'm
6 referring to?

7 A I do.

8 Q Okay. Now, you're aware that Jackie met with Dean Eramo
9 on May 20, 2013; is that correct?

10 A May 20, 2013?

11 Q Yes.

12 A Yes.

13 Q And were you made aware of that meeting with Ms. Eramo
14 shortly after that meeting took place?

15 A Yes.

16 Q And she also made an entry in the Advocate system that
17 you've testified about previously; is that correct?

18 A Yes. I don't have it in front of me, but my recollection
19 is absolutely.

20 Q And you've indicated that she was really good at making
21 entries in the Advocate system and doing them on a timely
22 basis and that was one of her strengths, correct?

23 A Actually, the best person in the office at that, yes.

24 Q And so do you recall -- and I'll be able to show you a
25 document if you don't -- that in this initial report by

1 Ms. Eramo that Jackie had reported to her that several men at
2 a fraternity had forced her to engage in unwanted sexual
3 contact and that there had actually been what your policy
4 refers to as sexual intercourse, oral sex, against her will?

5 A Yes. My recollection is that Nicole told me that a young
6 woman had come forward saying that the prior September, the
7 beginning of her first year, that she had visited a fraternity
8 house and had entered a room where I believe five men or a
9 group of men -- there is a number five that is in my mind;
10 when I learned that, I can't remember -- had coerced or forced
11 her to perform oral sex. That's my recollection.

12 Q And under the policy that we looked at a few minutes ago,
13 the university doesn't draw any distinction between oral sex,
14 vaginal sex, any other form where there's a penetration into
15 the body; is that correct?

16 A Yes, that's right.

17 Q So the fact that it was a description of oral sex didn't
18 make it less significant; is that correct?

19 A Not to me or under the policy, no.

20 Q And do you recall that Jackie couldn't remember the exact
21 name of the fraternity, but she knew it had a phi in the name?
22 Do you remember that?

23 A My recollection was that Nicole told me that Jackie
24 believed it was a fraternity that may have been located on
25 Madison Lane, that she thought there was a phi in the name,

1 that Nicole had specifically asked her, "Is it the fraternity
2 at the end of Mad Bowl?" which is Phi Psi, and that Jackie was
3 not certain about that.

4 Q And so just for the jury, we've talked a little bit about
5 Rugby Road, and that's sort of where the fraternities are.

6 Madison Lane, is that just on the opposite side of Mad
7 Bowl?

8 A Thank you. So let me try to explain the topography.

9 So Rugby Road is a main road that kind of runs away from
10 the Rotunda. And along -- if you're going away from the
11 university, on the left and right side are several houses
12 which are Greek, fraternities and sororities. But to the
13 right of Rugby is a large sports field called Madison Bowl.
14 Mad Bowl, students call it. It's right behind Madison Hall,
15 the president's office.

16 And then Madison lane, I think it is, is just on the
17 other side of that athletic field. And it too is lined with
18 fraternity and sorority houses. And then there's also one at
19 the very end that faces Mad Bowl, and that's the Phi Psi
20 house.

21 And then there's Chancellor, which runs from Rugby behind
22 Madison and curves around to be parallel, which also has a
23 number of Greek houses.

24 Q Just so I understand: So the president's office at the
25 University of Virginia is in Madison Hall; is that correct?

1 A Yes.

2 Q And her office then looks out on the Mad Bowl?

3 A It does.

4 Q And so she can look right across -- is the Mad Bowl on
5 campus?

6 A Is it our property?

7 Q Yeah.

8 A Yes.

9 Q It is. Okay. But the fraternities around Mad Bowl are
10 not your property; is that right?

11 A Correct. Except for the three on the left side of Rugby,
12 which we're not talking about here. But those three sit on
13 university land. All the rest are on private land.

14 Q Right. So if some event happens there that might be
15 criminal in nature, the Charlottesville police would have to
16 be involved at that point?

17 A The Charlottesville police have jurisdiction over
18 anything that happens in one of those houses other than the
19 six that sit on university land.

20 Q Right. And so at the time of this report, 2013, how many
21 fraternities in that area had the term "phi" in it?

22 A Well, part of it depends upon how we define the area,
23 right? Because I think that was part of the question here.
24 If it's just Madison Lane, there are three, one of which is
25 right now closed. The letters are still there, I think, but

1 it's closed, which is Sigma Phi Epsilon; Phi Kappa Psi at the
2 end of Mad Bowl; and Phi Gamma Delta up closer to the front of
3 Madison Lane.

4 Q So was the fraternity that you mentioned first that's
5 closed, was it closed in 2012 and 2013 too?

6 A Yes. I terminated our relationship with that fraternity
7 in 20 -- maybe -- 10 for hazing, and so it has been shut down.

8 Q Now, in addition to the information that you shared with
9 us about the report you received from Ms. Eramo, did you also
10 understand that Jackie reported that she had gone to this
11 fraternity house with a coworker that worked with her at
12 IM-Rec?

13 A Yes. I believe I was told that by Nicole at some point,
14 yes.

15 Q And so -- and that he was an upper classman and possibly
16 a member of the fraternity?

17 A Yes, I believe that's right.

18 Q And so in May of 2013, you knew that you had what was
19 described as a horrific sexual assault in a fraternity and
20 that one of the perpetrators of this was a coworker with
21 Jackie at IM-Rec; is that correct?

22 A I can't remember when the IM-Rec knowledge came to us.
23 It may have been close in that time, I believe. But, yes,
24 those facts you have laid out I think are what we knew at the
25 time.

1 Q And so at the time that you learned about that, did the
2 university take any steps to collect the work records from
3 IM-Rec?

4 A Not to my knowledge.

5 Q If you had gotten the IM-Rec work records from
6 September 2012, you would have a list of all the people that
7 worked at the same time that Jackie worked, because you knew
8 Jackie's name at that point, correct?

9 A With the caveat that, as I said in my deposition, I don't
10 believe I know how IM-Rec -- they're part of athletics. I
11 don't know how they classify employees, what records they keep
12 on schedules. They hire a number of students to be -- to
13 manage the various IM-Rec facilities. I think there's four or
14 five of them across the university, the gymnasiums where
15 students work out.

16 So they're lifeguards, they're intramural officials, they
17 check students in and out of the gymnasiums, they work as
18 trainers. So I don't know what the numbers are of students
19 that work in those positions, and I don't know how IM-Rec
20 keeps the records.

21 That said, given the predicate of your question, yes, if
22 the question is whatever records IM-Rec had, could you compare
23 those against a list of members of various fraternities, I
24 assume at some point you could, yes.

25 Q Thank you.

1 A I just don't know if you could show who worked with
2 Jackie at exactly the same time. I don't know that.

3 Q Right. So if I understand correctly from the testimony
4 that Ms. Eramo gave earlier from May 20, 2013, until she had
5 another meeting with her in her office on April 21, 2014, the
6 university did not conduct any investigation into Jackie's
7 allegations of a brutal assault in a fraternity; is that
8 correct?

9 A My understanding to that is that Nicole was in regular
10 touch with Jackie and that Jackie had not given us the name of
11 the young man that had brought her and would not, had not been
12 able to tell us what fraternity this had occurred at, thought
13 it might have been on Madison Lane but wasn't certain of that.

14 So, yes, based on the information that we had available
15 to us, the decision was made to try to support Jackie and to
16 hope that at some point more information might have been
17 forthcoming.

18 Q Then you did become aware that Jackie came back to see
19 Ms. Eramo in April of 2014; is that right?

20 A April 22 of 2014, I believe.

21 Q And if the report says that they met on April 21, you
22 would defer to that?

23 A I would defer to that. I'm going off my memory, so yes.

24 Q It's amazing.

25 A Yes, sir.

1 Q More than two years ago.

2 So, at that time, did Ms. Eramo report to you that, when
3 Jackie came to meet with her, she reported that she had been
4 the victim of an assault on The Corner, with a bottle being
5 thrown at her?

6 A Yes. My recollection is that Jackie had come to see
7 Nicole, Dean Eramo; and that she had reported that she was
8 walking down The Corner, which is the district across from the
9 Rotunda where there are bars and restaurants and very heavily
10 frequented by students; and that she had been walking by -- I
11 forget which of the establishments, one of eateries and bars
12 there -- and that some young men had called out to her, I
13 think maybe even by name, by Jackie or something like that;
14 and that she had turned, and they had said something like,
15 stop saying things about us or talking about our fraternity,
16 or something like that, and had allegedly thrown a paper bag
17 at her, which she described to Nicole as striking her in the
18 face and cutting her or something like that. And so she
19 perceived there must have been a bottle inside the bag, and
20 that that's what prompted her to either ask to come see Nicole
21 or show up. I don't know what had made it happen, but on the
22 21st when she came in.

23 Q So I want to pause for a second and go back to the
24 document that I couldn't find.

25 A Okay.

1 Q If we can pull up Defendants' Exhibit 16. Go to page 38,
2 please, just close the loop so people will have that.

3 This is a report that the University of Virginia
4 published in September 30th, 2014. This is -- within that
5 longer report is this document.

6 A Yes. This is August 25, 2014, when we were announcing
7 that almost all of the employees of the university were
8 responsible employees, with a duty to come forward with
9 reports of sexual misconduct made to them by students, and
10 that only a small classification of psychological counselors
11 and medical doctors would be excluded from that.

12 Q Right.

13 MR. PAXTON: And if you go down, Scott, if you
14 could.

15 BY MR. PAXTON:

16 Q If you continue to go through it, this is where --
17 there's also a panel, an evaluation panel, that is
18 established.

19 MR. PAXTON: If you -- keep going. All right.
20 Okay.

21 BY MR. PAXTON:

22 Q At the top of this page -- you can stop and go back up --
23 it says, "Consistent with Title IX and other applicable
24 federal laws, this policy outlines the options available to
25 students who report alleged sexual misconduct, as defined in

1 the policy, to a variety of people to report such disclosures
2 to the university's Title IX coordinator so that the
3 university may provide appropriate support to the students and
4 commence an investigation into the alleged sexual misconduct
5 in appropriate cases."

6 So this was designed to address this additional -- this
7 was the reason that you were adopting the policy, correct?

8 A Yes. The focus of this was this decision to designate
9 virtually all employees of the university, whether they were a
10 groundskeeper or the president, as a responsible employee who
11 must bring forward. They could not have a student come to
12 them, say, a professor, have the student say, I want to talk
13 to you in confidence, and the professor not report that to the
14 university.

15 Q And prior to this, I guess there must have been some
16 uncertainty on campus who was obligated to report and who
17 wasn't?

18 A I think that was our perception.

19 Q Okay. Continue. I think there is a -- sorry. I don't
20 have the hard document in front of me.

21 You see here there's an evaluation panel and the
22 definition. It says, "A three-person panel charged with
23 evaluating the reporter's request for confidentiality. Such
24 panel will be comprised of the Title IX coordinator, the dean
25 of students, and a member of the university's threat

1 assessment team."

2 So this policy, also in addition to designating people
3 who needed to report the information, there was now a new
4 evaluation panel that was being put in place to evaluate
5 situations where there was a request for confidentiality?

6 A Yes, sir. Where a report came in and the student
7 requested confidentiality, there would be an evaluation panel
8 that would review that report. I think it remained in place
9 like this for the duration of that academic year, 2014-'15,
10 and then changed. The evaluation panel looks different today.
11 But yes.

12 Q And that was changed under the policies that were adopted
13 after the Rolling Stone article came out, correct?

14 A I think, yeah, sometime maybe in the next summer, I
15 believe.

16 Q And do you recall that this policy set out the criteria
17 by which the evaluation panel was supposed to make its
18 assessment about whether they can honor the confidentiality
19 request of a reporting student?

20 A I could flip through this, but my recall is that the
21 information that was contained in the April 29, 2014, guidance
22 from the federal government was looked at and a set of factors
23 or criteria were developed that ultimately resulted at some
24 point in a sheet that we use today that you go through this
25 set of factors -- the current evaluation panel, which is much

1 larger, goes through and looks at those factors.

2 Q And so prior to August 25, 2014, there wasn't a formal
3 process that UVa used to evaluate whether or not a student's
4 request for confidentiality was to be honored or whether or
5 not the university needed to do a more in-depth investigation;
6 is that correct?

7 A I think that's fair.

8 Q Okay. And do you know -- okay. So thank you. We'll go
9 from that document.

10 Let me go back to the conversation we were having.
11 Sometimes I have a hard time changing gears.

12 But we were talking about the second time that Jackie
13 came to see Nicole Eramo in April of 2014.

14 In addition to this bottle incident that you described,
15 do you recall that Ms. Eramo reported to you that she had
16 become aware that a first-year student had been sexually
17 assaulted on January 24, 2015, at the same fraternity that she
18 had been assaulted at?

19 A My recollection was a conversation with Nicole. It must
20 have been -- I don't know when Jackie came in on the 21st, but
21 it must have been sometime on the 21st. Because I know
22 Nicole -- I haven't gone back to look at my calendar, but I
23 think it was very quickly in time that Nicole came in to see
24 me, said that Jackie had come back in, that Jackie alleged
25 that she had been hit with this bottle -- and I say "alleged"

1 because I'm a lawyer -- but I think Nicole said Jackie was hit
2 by a bottle and came in to see me and was very upset, and that
3 Nicole had talked to her about going to the police, and that
4 Jackie had agreed to talk to the police.

5 And I remember I was very happy about that. And I said,
6 "Okay. Well, that's great. We can finally get the police
7 involved now in this."

8 Q Right.

9 A And she said that Jackie had said that the
10 bottle-throwing was in retaliation for her being an outspoken
11 advocate because of her own experience as a survivor of being
12 assaulted. And Nicole got her, as I recall, in front of a UPD
13 and CPD officer the next day, within 24 hours. I think that's
14 the 22nd day that I had in my mind, was the meeting with the
15 police, and that there was then a subsequent meeting with a
16 Charlottesville police detective on May 1, maybe.

17 Q So, in addition to the bottle incident, do you recall
18 that she also told you about this second sexual assault?

19 A I'm sorry. Yes. In going through that, I forgot to
20 address that part of your question. I apologize.

21 Q That's okay.

22 A Yes. That Jackie, in this conversation with Nicole, had
23 said that Jackie was aware of a first-year student, whose name
24 was never given to me -- and I don't think whose name we ever
25 had -- who alleged that in January that she had been

1 assaulted.

2 In this same conversation, Jackie said to Nicole for the
3 first time, it's Phi Psi, it's Phi Kappa Psi, and that this
4 first-year claimed or told Jackie that an assault had occurred
5 to her in January, several months earlier, at the same
6 fraternity.

7 And I'm trying to remember. I believe Nicole said to
8 Jackie -- asked for the name, Jackie declined, said can this
9 student make a report? And that almost immediately from
10 Jackie leaving the office, the report came in.

11 Q And it was an anonymous report, correct?

12 A It was.

13 Q It was consistent with the information that Jackie
14 reported to Ms. Eramo at that point.

15 A It was brief. But, to my knowledge, yes, it was
16 consistent with what Jackie had said.

17 Q And it made it clear that, just three months earlier,
18 there had been a sexual assault at the Phi Psi fraternity by
19 multiple men on this first-year student, correct?

20 A Yes.

21 Q And at the time you got that information, you believed
22 that information to be true? You didn't have any reason to
23 doubt it, did you?

24 A I did not.

25 Q And so, in addition, were you aware that Jackie had also

1 told Ms. Eramo that she had learned of a student who had
2 graduated in 2013 who had been sexually assaulted at the
3 Phi Psi fraternity in 2010, so before Jackie's assault?

4 A And I've thought about that, because I -- in thinking
5 about coming here to testify, I can't remember when that was
6 brought up. You may be right.

7 But I know at some point, Nicole told me that Jackie was
8 also alleging that a student who was about to graduate said
9 that she was assaulted in the fall of 2010 at the same
10 location.

11 Q Right. So now you have three reports of really brutal
12 criminal activity in a fraternity house, not on campus but
13 adjacent to campus, virtually on campus --

14 A It doesn't matter to me that it's not on campus.

15 Q Right.

16 And so did you report this to Pat Lampkin?

17 A Yes.

18 Q And did you report this to President Sullivan?

19 A Yes.

20 Q And it's your -- I believe you testified that Jackie had
21 originally agreed to meet with the police on April 22?

22 A The next day.

23 Q Right. And so we've heard testimony from the officer.
24 After that meeting on April 22, what information did you get
25 about what happened at that meeting?

1 A I'm trying to remember when Nicole updated me, because I
2 know there ended up being a second meeting with the police.

3 I clearly remember being told by Nicole about Jackie's
4 report and that Jackie was going to talk to the police now. I
5 was ecstatic, you know, because the police have the ability to
6 do things that we cannot do. Jackie had not been willing to
7 give us names, specific information, that -- you know, of who
8 we could obviously pull in as a suspect.

9 The police have the ability to subpoena, use search
10 warrants, get text messages. That had been effective in a
11 couple of big hazing cases we had had, which allowed me to
12 prove the case against the fraternity because the police had
13 gotten electronic messages that I wouldn't have otherwise been
14 able to get.

15 So my perception was that this was now going to move into
16 the police realm and that we were going to get an outcome, a
17 positive outcome.

18 Q And so -- but it didn't turn out that way, did it?

19 A It didn't.

20 What I do have a very clear memory of was Nicole speaking
21 with me sometime after May 1, because that was the second
22 meeting with the detective one on one, and that Jackie was now
23 backing away from talking with the police. I think she had
24 said to Nicole that the detective was aggressive or something
25 like that, in her mind.

1 Nicole told me she had gone back to Jackie and said, "I'm
2 sorry if you felt he was aggressive. Police, you know,
3 sometimes come across that way," but I think she had tried to
4 calm Jackie and say this was important. At least that's what
5 I was hearing from Nicole.

6 What I remember too was Nicole telling me -- and I think
7 she put this in Advocate shortly thereafter -- the
8 Charlottesville police said they were suspending the
9 investigation, not closing it, suspending it, and that they
10 were willing to reopen that investigation.

11 And so whenever you're ready to ask me about it -- I know
12 what I did after that -- I'm happy to talk about that.

13 Q So would you be surprised that Officer Via testified
14 yesterday and said he closed the file?

15 A That was not how it was communicated to me at the time.

16 Q And so you were led to believe that there was still some
17 pending criminal investigation at that time?

18 A The word that I remember being told -- and I think she --
19 was "suspended." And so my interpretation -- although I
20 wasn't in contact with the police; Ms. Eramo was. My view of
21 "suspended" was they were willing to reopen it if Jackie would
22 come back in.

23 Q But as we've seen earlier under your policy, you still
24 had an obligation to conduct your investigation whether she
25 went forward with the police report at that point or not;

1 isn't that true?

2 A We had an obligation to attempt to find out what we
3 could, yes.

4 Q Right. And so, at that point, in April of 2014 or early
5 May of 2014, at this point, you now knew that Jackie's alleged
6 assailant was a member of Phi Psi? She believed that to be
7 the case?

8 A (Indicating in the affirmative.)

9 Q You knew that the two of them had worked together at
10 IM-Rec, correct?

11 A Yes.

12 Q You also knew that there was another young woman who had
13 been assaulted three months earlier, in virtually the same
14 context that Jackie had reported, correct?

15 A But with no name of that individual to interview her and
16 find out details.

17 Q But you also had the information that the assailant of
18 the anonymous report was a fourth-year student; is that
19 correct?

20 A That's possible. I'm sorry. I don't remember. But
21 that's possible, yes.

22 Q And so here you were at a crux in time of May -- late
23 April, early May, right before graduation, where you had
24 information about a potential assailant at a fraternity about
25 ready to graduate?

1 A I don't remember thinking about it in that way. But I
2 hear what you're saying, yes.

3 Q And so once that student, if they were -- the report that
4 was made to you guys was that -- through this anonymous
5 source, was that a fourth-year student had assaulted her in a
6 very similar way to the assault that had happened to Jackie.
7 And unless some action was taken before graduation, if that
8 person graduated, you had no jurisdiction over them; is that
9 correct?

10 A Under our policy, you are correct.

11 Q And so during the months of May, June, July, and August,
12 to your knowledge, did the University of Virginia do anything
13 to investigate Jackie's allegations or these other allegations
14 of rape at the Phi Psi fraternity?

15 A So what I recall is she comes in on April 21st. She's
16 with the police on April 22. On May 1st, she's with the
17 police again. I know on April 29, in between the police
18 meetings, is when the federal government issued the new
19 guidance that had the details. I know that in -- Nicole was
20 keeping me apprized of the conversations with Jackie.

21 Whenever after May 1st Nicole came and told me that the
22 investigation by the police had been suspended because Jackie
23 wouldn't participate or cooperate, I said to Nicole, keep
24 working on her -- because she was upset about this police
25 officer being aggressive -- and see if you can change her

1 mind, stay in touch with her. Nicole said yes.

2 I know Ms. Davis, Ms. Lampkin, and I briefed President
3 Sullivan at a dinner, I think on May 5, 6 -- I remember
4 looking at my calendar, somewhere in there -- told her where
5 we were. We had multiple meetings, Ms. Davis, Ms. Lampkin,
6 and I, in mid May -- because we were in final exams at this
7 point -- in mid May about the fact that -- I'll be frank with
8 you --

9 Q Please.

10 A -- and I don't want to be uncharitable, but I was -- I
11 was angry about the fact that Jackie would not tell us
12 anybody's name. She clearly knew the name of the guy that
13 brought her there. She wouldn't give us that name. She
14 wouldn't give us the name of these two women who she said had
15 told her that other physical assaults had happened.

16 It was as frustrated as I think I ever remember being in
17 this job, because I couldn't understand how you can have that
18 kind of a violent act and be unwilling to tell people the very
19 facts they need to take action. And so I know at the end of
20 May, beginning of June, there was a privileged conversation --
21 which you know I can't talk about -- where I sought the legal
22 counsel from the university's attorneys about options
23 available to me.

24 Ultimately, the conclusion that we in student affairs --
25 Ms. Lampkin, Ms. Davis, and I -- drew was that Nicole would

1 stay in touch. We didn't believe the fraternity house would
2 have any activity over the summer. That tended to be the
3 practice at UVa, that they closed over the summer. That
4 Nicole would stay in touch with Jackie, that -- the hope that,
5 when Jackie went home for the summer, that she would change
6 her mind. And that when we came back in the fall, we could
7 see if Jackie was willing to help us in any way.

8 If she didn't, Ms. Davis had mentioned doing the targeted
9 training, essentially going to Phi Psi and saying we're going
10 to do Title IX training, as the federal government has said
11 that we should do as one option.

12 I had raised the issue in May. I think it was in mid
13 May, I raised the concern -- I'm sorry. Do you need me to
14 wait?

15 Q No. Go ahead.

16 A Oh, okay.

17 In mid May, I had raised the concern about terminating
18 our agreement with the fraternity. And I had said that we
19 certainly had three allegations, but I couldn't prove them. I
20 didn't have the evidence to prove them. I didn't have a
21 witness who was going to say, yes, this is what happened and
22 this is who did it.

23 And the risk that I feared, unlike the hazing cases --
24 because I've closed four fraternities in my time as dean for
25 hazing. And in those cases, I had the evidence, I had

1 witnesses, and so I was able to go to the national fraternity
2 which gives the charter to the organization to operate, and I
3 could go to the alumni who owned the house, the physical
4 property, the house and the land.

5 And in each of those cases, I was able to convince the
6 two of them that they should join with me, that when I
7 terminated the operating agreement between the fraternity and
8 the university, they would shut the fraternity down, which
9 they had the power to do and I didn't.

10 And the issue I raised in mid May with Ms. Lampkin and
11 Ms. Davis was that, if I had tried to terminate the operating
12 agreement with Phi Psi but couldn't prove a case, that Phi Psi
13 would continue to be open but as an unrecognized fraternity at
14 the university. They own the land. They own the house.
15 They're still there. And now I no longer have any leverage
16 with them whatsoever.

17 And I saw that happen when I lived in Atlanta at Emory
18 University with the AE PI chapter. The university had
19 terminated the operating agreement with them, but they
20 continued to operate and actually became a very popular
21 fraternity because it was perceived as the rebellious thing to
22 do to join them.

23 So I had a very real fear that if I acted against
24 Phi Psi -- which I wanted to do at that point because I
25 believed this to be true at the time -- that they would

1 continue to operate and I would have no leverage over them
2 whatsoever and would have achieved essentially nothing.

3 Q And that was your judgment about the situation, correct?

4 A Yes, sir, that was my judgment.

5 Q And as we have seen under the policy, the policy says
6 "reasonable measures." So people can disagree with that
7 perception, right?

8 A Oh, people can disagree with my decision on that?

9 Q Sure.

10 A Sure.

11 Q Sure.

12 Now, would you be surprised to know that when Detective
13 Via testified yesterday that at the end of the meeting on
14 May 1, he made it very clear that their investigation was
15 closed, and that Dean Eramo said the university would be --
16 would look into this and that Jackie left that meeting happy
17 with that?

18 MR. CLARE: Objection. That's a mischaracterization
19 of Detective Via's testimony. It misstates the record.

20 THE COURT: I have to agree. That's not my
21 recollection. Perhaps we could pull that excerpt. There's
22 one portion of it that I don't think coincides with my
23 recollection of what the detective said.

24 MR. PAXTON: Well, Judge, I trust the jury to --
25 their recollection. I think that's what's really important

1 here.

2 THE COURT: So let's move to the next question.

3 MR. PAXTON: Absolutely, Your Honor.

4 BY MR. PAXTON:

5 Q So when you came back -- when school started in August of
6 2014 --

7 A Right. August 20-something is when we usually start,
8 yes.

9 Q Did you immediately reach out to the fraternity to talk
10 with them about this situation?

11 A Not immediately. I think it was early September. We had
12 a couple of more meetings when the school year started. I
13 asked Nicole again, "Where is Jackie in this process?"

14 Jackie was, at that point, not willing to do anything
15 more, not willing to start the police investigation again. I
16 was aware of a conversation I had had with Dave Chapman -- who
17 is the prosecutor for Charlottesville, the Commonwealth's
18 attorney -- in a hazing case a couple years earlier, one or
19 two years earlier.

20 And Dave had told me that he was very concerned about me
21 tipping off people that were about to be part of a criminal
22 investigation. And that was part of what I had sought counsel
23 about in June.

24 And so I continued to say, okay, what can I do here? And
25 I don't want to interfere with a police investigation, but if

1 this individual, Jackie, is never going to work with the
2 police, then there's never going to be a reopened criminal
3 investigation. And so I may be tipping off Phi Psi, you know,
4 and interfering with a police investigation that may come in
5 the future, but I'm running out of options here.

6 And so we had several conversations at the beginning of
7 the school year that ultimately led to Ms. Davis and
8 Ms. Lampkin agreeing with me that I could reach out to the
9 national fraternity.

10 Q And so that also happened during the same time period
11 that you learned that Ms. Erdely was coming to campus to
12 conduct interviews, correct?

13 A I think I had known that -- I think you-all have shown me
14 in the past, in my deposition. I think I had known that in
15 July. But, yeah, sure, I knew that was going on.

16 Q Right. And, in fact, we showed earlier some e-mails
17 that, as of September 9, you knew she was actually coming very
18 soon because she was trying to arrange an interview with
19 Dean Eramo, correct?

20 A Sure. That's possible. I don't remember linking the two
21 in my mind, because I had been very focused on this case since
22 May, April, when Nicole told me Phi Psi.

23 Q And the first call that you made to anyone at Phi Psi was
24 on September 12; is that correct?

25 A I knew it was early in September, so that's probably

1 right.

2 My recollection is I called -- I e-mailed first and then
3 called Shawn Collinsworth, who is the chief executive officer
4 of Phi Psi national fraternity.

5 Q And as part of that, ultimately what happened is the
6 national fraternity sent someone to campus?

7 A Yes. I told him, having worked at a fraternity myself in
8 the 1980s, at a headquarters of my own fraternity, I told him,
9 "Don't send somebody junior. This is very serious. I want
10 you to send somebody senior."

11 And I think they sent the number two person on his staff
12 within a matter of days.

13 Q And you were not able to meet with him because of the
14 Hannah Graham situation, so Ms. Eramo helped him; is that
15 correct?

16 A That is correct.

17 Q And is it your understanding that at the meeting that
18 took place at the chapter house while that representative from
19 the national was here, that the details of what Ms. Eramo knew
20 was shared with the fraternity in as much detail without
21 giving the names?

22 A I wasn't at the meeting. I believe the director of
23 fraternity and sorority life was there. I think Nicole was
24 there. I just can't remember. I'm sorry. But I know Nicole
25 met with this individual. I think there were multiple

1 meetings, because there was a later meeting where some alums
2 may have been involved. I met with the leadership of the
3 chapter.

4 So my timeline isn't real good, but I know I called the
5 CEO of the national fraternity, told him that I had concern
6 about a pattern of sexual assaults by multiple males occurring
7 in that house, that I had no complainant but that I might in
8 the future. I gave him dates -- 2010, 2012, 2014, January
9 '14 -- and said I want you to send somebody down here because
10 I don't have the police involved, I can't execute a search
11 warrant, I can't look and see if they have group chats and
12 those kinds of things in the fraternity, but you potentially
13 can, and can you come down and do that right away.

14 Q And so, by this point in September of 2014, you knew or
15 at least could have known that the attacker that was reported
16 to have been involved in the January 24, 2014, event had
17 likely graduated if he was a fourth-year man at that time?

18 A As I've said to you previously in my testimony, I don't
19 remember thinking about that piece of it. I was very focused
20 on having these people put in jail and shutting down the
21 fraternity.

22 Q And so you asked the fraternity to conduct an
23 investigation of itself; is that right?

24 A On those issues that I just mentioned to you, which is to
25 come in and figure out if there were text group chats, those

1 kinds of things that the fraternity had access to, because
2 that had come up in a hazing case involving Sigma Nu, that the
3 national had been able to access a group chat that showed the
4 gentlemen talking about what was going on, and that was the
5 evidence I needed to shut them down.

6 MR. PAXTON: Looks like we need a break.

7 THE COURT: Yes.

8 So, ladies and gentlemen, we'll take our second
9 midmorning break. Looking ahead, I'll again ask that while
10 you're away from us, you do not discuss the case with one
11 another, do not permit anyone to discuss it with you. I'll
12 ask the witness not to discuss his pending testimony with
13 counsel from either side.

14 Let's plan to return at 25 after the hour.

15 Ask the marshal to declare the court in recess.

16 (Recess)

17 (Jury in)

18 (Open court as follows:)

19 THE COURT: I see the ten jurors are in their
20 places, ready to move forward.

21 Mr. Paxton, you may continue.

22 MR. PAXTON: Thank you, Your Honor.

23 THE WITNESS: May I ask one thing? I'd like to
24 supplement a prior answer during the break that I thought
25 about, something I didn't say.

1 BY MR. PAXTON:

2 Q We're here to get the truth.

3 A Thank you, sir. I agree.

4 Sometime in that period after Jackie had come to Nicole
5 in April/May -- April of 2014 and then the police meetings,
6 Detective Via and Sergeant Harris came to see me. That's how
7 I had their contact information to give to Ryan when he came
8 to see me in December.

9 And I told them the only witness name that I had ever
10 been given was Jackie's and that I urged them to use --
11 because of FERPA, I couldn't give them my Advocate system.
12 But I told them if they served us with a search warrant -- or
13 a subpoena, that we would turn the whole thing over to them.

14 So I met with those two officers myself personally. And
15 I failed to mention that to you.

16 Q And do you recall that that occurred sometime in late
17 April or early May?

18 A My best estimate would be that it was either -- it
19 definitely was between the April 22 and May 1st, or shortly
20 after May 1st. It wasn't much further than that.

21 Q I'm going to shift gears. Thank you very much.

22 A Certainly.

23 Q One of the things that you had mentioned earlier in your
24 testimony was that the policy of the university changed from
25 the 2011 policy that we were talking about. And I believe

1 your testimony was it changed in March of 2015.

2 Is that your recollection?

3 A I think so. I know there was the 2011 policy, July '11;
4 there was an interim policy; and then there was ultimately the
5 policy that we have today.

6 MR. PAXTON: Okay. Mark this and this.

7 MS. MOODY: Defendants' 77 and 78.

8 THE COURT: 77?

9 MS. MOODY: Yes. And 78.

10 THE COURT: Tell me what 76 was.

11 MR. PAXTON: 77, Your Honor, is --

12 THE COURT: 76.

13 MS. MOODY: 76 was the 10-13 e-mail thread between
14 Eramo --

15 THE COURT: Oh, yeah.

16 What's 77, Mr. Paxton?

17 MR. PAXTON: The executive summary of the policy
18 changes.

19 THE COURT: Thank you.

20 MR. PAXTON: And 78 is the interim policy.

21 THE COURT: Thank you.

22 BY MR. PAXTON:

23 Q This only has one sticker on it.

24 A Thank you. Thank you.

25 Q Dean Groves, can you identify what has been marked as

1 Defendants' Exhibit 75 as the executive summary of the policy
2 changes that took effect in March?

3 A I think you mean 77.

4 Q 77. Sorry. That's correct.

5 A Yes. At some point we posted on the website an executive
6 summary and the new policy. And 77 appears to be what you got
7 if you clicked on the link for the executive summary, and 78
8 appears to be the full interim policy. I think they were
9 separate links that you could highlight to and click onto on
10 the website.

11 Q And Deposition 78, which is the interim policy, on the
12 first page indicates it's 50 pages long; is that correct?

13 A Yes.

14 Q And if you compare that to the Defense Exhibit 45, which
15 was the sexual misconduct policy that I believe we've been
16 talking about, that was 18 pages; is that correct?

17 A Yes.

18 Q And so Deposition Exhibit 77 is an executive summary of
19 the various changes that were made in the policy; is that
20 right?

21 A Give me one moment.

22 Q Sure.

23 A I believe that to be right, but it's been a while since
24 I've seen this.

25 Yes. We had put the draft policy out for public comment,

1 kind of like federal rule-making is done in November, and I
2 see they reference that. They talk about the various federal
3 guidance that been issued so that people were aware of that.
4 And then there's a summary of key changes from the prior
5 policy to this interim policy. Yes, sir.

6 MR. PAXTON: And just for the record, Your Honor, I
7 have this terrible habit of saying "deposition exhibit"
8 because I do that a lot more than I am in court.

9 THE COURT: Everyone does these days.

10 MR. PAXTON: Yeah. So I apologize for that. So it
11 is defense exhibit, not deposition exhibit.

12 BY MR. PAXTON:

13 Q Now, if you look at the first page of the executive
14 summary --

15 MR. PAXTON: Your Honor, I move these into evidence.

16 THE COURT: 77 and 78 without objection.

17 (Defendants' Trial Exhibits 77 and 78 admitted)

18 BY MR. PAXTON:

19 Q If we can pull up -- it's DTX49.

20 If you'll look -- while he's doing that, Dean Groves, if
21 you'll look at the second paragraph of the executive summary.

22 A That begins "The development of"?

23 Q Yes, yes.

24 A Okay.

25 Q The last sentence of that says, "It also reflects the

1 expertise of Pepper Hamilton, a national firm retained by the
2 university to provide consultation and guidance in this
3 endeavor."

4 Is it your understanding that the University of Virginia,
5 after the article came out, hired Pepper Hamilton to give them
6 advice?

7 A With the caveat that I don't know when that happened,
8 because it would have been done by the general counsel's
9 office or someone else. And with the caveat that Gina Smith,
10 the principal in this area, who's considered one of the
11 national experts on this, I had met her previously and spoken
12 with her at conferences.

13 With those two caveats, there's no question that the
14 university retained Pepper Hamilton during this time frame. I
15 just can't remember when that retention was made because I
16 wasn't involved in it.

17 Q Gina Smith is one of the lawyers from Pepper Hamilton.
18 Is that what you're --

19 A It was Gina Smith and Leslie Gomez, I think is her last
20 name. Yes.

21 Q But they'd never been hired by the University of Virginia
22 prior to the -- to give advice on a policy that you were
23 responsible for prior to this article coming out; is that
24 correct?

25 MR. CLARE: Objection. Foundation.

1 THE COURT: I think that's -- what's to come may be
2 of some concern, but I think that's fine.

3 The witness may answer.

4 THE WITNESS: I don't know. The general counsel's
5 office would be the place that would retain them under a
6 privilege, I assume. And nobody consulted with me about this,
7 even at this time, so I don't know.

8 BY MR. PAXTON:

9 Q But it was important for the university in this -- in
10 this policy -- were you involved in helping to put this
11 together?

12 A I don't think so. Just like the other policy, Susan
13 Davis would have been working with Gina Smith and our in-house
14 attorneys. And at some point someone would have shared a
15 draft with me. And I don't believe I changed anything because
16 it was essentially prepared at that point.

17 Q So based on that, your interactions with Ms. Smith and
18 your knowledge of Pepper Hamilton, you would agree with the
19 description here that they're a national law firm that has
20 expertise in this area?

21 A Yes. They have been quoted many times in the press and
22 have worked with many schools.

23 Q They were the lawyers that handled the Baylor University
24 coaching situation, right?

25 A I think they've handled -- I think Gina told me at one

1 point they were representing, I don't know, 50, 60 schools.
2 Yeah.

3 Q And so if you turn to the second page, the draft policy
4 was put up for comment. And I believe, if this report is
5 accurate, the university received 568 responses during the
6 time period that this policy was up.

7 A I have no reason to dispute that, no.

8 Q Okay. And so if you'll turn now to Defendants'
9 Exhibit 78, which is the interim policy.

10 This was the policy that took effect in late March of
11 2015 and remained in effect until the permanent policy which
12 you currently have in effect was adopted in July; is that
13 correct?

14 A Yes.

15 Q If you'll turn to page 7 of that document.

16 Do you see here under this interim policy in March of
17 2015 that Nicole Eramo was named as the deputy Title IX
18 coordinator for students?

19 A Yes.

20 Q So that was the position you'd held under the old policy,
21 correct?

22 A Yes.

23 Q And she'd not had that responsibility prior to this
24 interim policy coming out, correct?

25 A She had not had that designation, correct.

1 Q And so this was an important role for the university,
2 correct?

3 A Yes.

4 Q And so you had testified during Mr. Clare's questioning
5 that there was a time period when Ms. Eramo was at least
6 temporarily removed from dealing with students in the intake
7 area; is that right?

8 A Permanently. But yes.

9 Q Well, at this point she's now being put back in charge of
10 that entire process, correct, of intake and making sure that
11 complaints are handled properly?

12 A She's been given the oversight role but has been told
13 that she is not to actually conduct the intake herself.

14 Q It's not your testimony, though, that she never did any
15 intake after November of 2014, is it?

16 A I'm trying to think. I thought I had a conversation with
17 her where I said that intake would be handled by the deans on
18 call.

19 So somebody is on call in my office 24 hours a day, 7
20 days a week. So an assistant, an associate dean, has
21 responsibility for Thursday to Sunday and Monday to Thursday.
22 And that person is tasked with handling any incidents that are
23 reported to us by the police or from students or others.

24 The exception, up until the Rolling Stone article, was
25 sexual misconduct. The sexual misconduct report came into the

1 university; the dean on call channeled it always to Nicole.

2 After the story came out, the instruction was that the
3 deans on call were to handle those intakes themselves and
4 the -- at this point we also had the special assistant for the
5 honor committee, Alex Carroll, now Alex Hall, who was serving
6 as a case manager to triage all of those.

7 Q But if Ms. Eramo testified that she did have involvement
8 in the intake area through November of 2015, you would defer
9 to her testimony?

10 A If she said she was doing some intake, that's -- she
11 would know better than I would.

12 Q Right. Under this policy, she was given the most
13 important job in terms of overseeing how the university was
14 handling Title IX compliance when it came to student issues,
15 correct?

16 A Yes. I had kept her in full responsibility, as she
17 always had been, for all of our prevention work, which had
18 really ratcheted up. I had talked to the board of visitors in
19 the fall about that, so had Ms. Davis. So we were really
20 ratcheting up a lot of the prevention efforts that we were
21 doing.

22 So as being deputy Title IX coordinator, I saw Nicole's
23 role as being all of the prevention work and oversight to make
24 sure we were handling these things correctly during that
25 window of time. I felt that that role should shift from me to

1 her because she had been the one that really was paying the
2 close attention to it, and I felt that that role was correctly
3 put with her.

4 Q So, in effect, that was a bit of promotion for her. From
5 just doing intake, she now was in charge of much more,
6 correct?

7 A I would say that she had added some responsibilities,
8 lost some responsibilities; but regrettably, I didn't pay her
9 anymore. Yes, that's right.

10 Q So she got a pay raise in July?

11 A In July she got an increase during the regular cycle.
12 That's right.

13 Q Right. And she continued in the role as Title IX deputy
14 coordinator when the policy became effective in July of 2015
15 and became the permanent policy, correct?

16 A Right. During this time, during this spring period, we
17 had recognized that we were going to hire a stand-alone
18 Title IX office. That was part of the advice that we were
19 getting from Pepper Hamilton. And so we were going to create
20 an office that would do nothing but handle these Title IX
21 cases.

22 And so the person that was hired to be the new Title IX
23 coordinator started in August of '15. And then as soon as she
24 hired her two deputies, we moved out of this work entirely,
25 and we began to do nothing but support and prevention work,

1 and all of the case handling was done by the Title IX office.

2 Q So when you use the word "we" --

3 A Dean of students.

4 Q -- you're referring to dean of students?

5 A Dean of students office.

6 Q If we can pull up Defense Exhibit 57, please.

7 This is an article from the Cavalier Daily introducing
8 the first full-time Title IX coordinator, which you just
9 mentioned. And do you see there -- actually, let's go to the
10 bottom of the page, if we can, where it begins, "Associate" --
11 do you see "Associate dean of students Nicole Eramo said in an
12 e-mail statement" --

13 A Okay. I'm sorry. I see it. Yes. In the bottom.

14 Q "She will remain in her capacity as Title IX coordinator
15 of students alongside Hodge."

16 A Yes. Until Ms. Hodge, I think, hired the two deputies,
17 which happened sometime over the course of that fall, that is
18 correct, as I said earlier. At this point it's just Ms. Hodge
19 who has come. It ends up being a team of three people.

20 Q And all of that responsibility is outside the dean's
21 office, correct?

22 A All of the case intake. So, for example, I had someone
23 come to see me this week, didn't tell me why, came into my
24 office, and explained that it was one of these cases.

25 I first said -- I'm giving you kind of a way of how it

1 works now.

2 I said, "I'm the responsible employee. I want you to
3 understand that this won't be confidential, whatever you're
4 about to tell me." And this person understood that.

5 The person then gave me the information. And then what I
6 did is said, "Okay. I'm going to document this into Advocate,
7 which will trigger the case manager to notify the Title IX
8 office, who will also see it, and they will then unassign me
9 from the case and take over responsibility."

10 The Title IX office now does the investigations. The
11 Title IX office now handles all of the adjudication work and
12 the sanctioning. The Title IX office issues the no-contact
13 directives and the interim remedial measures. The only role
14 that we play now in this is to provide support to the student
15 who has brought it forward and support to the student who is
16 the respondent, the accused student in the process, and to do
17 all of the education across the university and outreach.

18 So, for example, last night the Title IX deputy
19 coordinator and I conducted a Title IX training for an
20 athletic team.

21 Q And so under that change, for Dean Eramo to have
22 continued as the Title IX coordinator, she would have had to
23 leave the dean's office; is that correct?

24 A She would have to go to work in the Title IX office.
25 That's right.

1 Q Right. And so what you've just described of someone
2 coming to you to report their sexual assault, or whatever the
3 situation was --

4 A In this case, misconduct, but yes.

5 Q Right. And so -- but that's true of any professor on
6 campus. They can go to them, and that's exactly the same
7 situation, correct?

8 A Yes and no. Yes, they would be required to then put it
9 into the Just Report It system. They don't use Advocate the
10 way I have the ability to use Advocate. Right?

11 But, yes, we have an online portal now called Just Report
12 It that used to be only for bias reports that we expanded to
13 include reports of sexual misconduct and hazing.

14 And so when you go to Just Report It now, there's a
15 picture of President Sullivan and kind of a narrative, and you
16 can choose which of those you're putting in. And part of what
17 we have trained the faculty to do is to go to that website if
18 a student says to them, "I was raped" or "I'm being stalked or
19 harassed," and that they are then to put it into the system in
20 that manner.

21 And the Title IX office will then be pinged to know to
22 respond to that and that my office will know that we're to
23 reach out and provide support.

24 Q And so once that happens, in your case, did you go
25 through all the list of options that were available?

1 A Not anymore, no. What I told them was we have an
2 infographic that was put together. So it's an infographic
3 that talks about all of their options. We're told to give
4 them the infographic and to tell them that the Title IX office
5 will be in touch with them and that we are available for any
6 support they need, a referral to counseling services, those
7 kinds of things.

8 And when I meet with the responding student, the Title IX
9 office will call that person in and ask me to be there.
10 That's going to change at some point, but right now for any
11 respondent, the Title IX office has asked me to be the support
12 person, and the deans on call are handling the students who
13 are bringing the reports, because they're dealing with that
14 student when the student walks in.

15 I'm never on call. So I'm the one person that we know is
16 never going to have had contact with the reporting student.

17 The hope and plan is that that is going to change at some
18 point.

19 Q And so one of the things from your testimony -- we
20 haven't really talked about it, but there was an investigation
21 of the way the University of Virginia was complying with
22 Title IX that was ongoing during the time period of 2011 up
23 until September of 2015; isn't that true?

24 A Yes.

25 Q And part of what they were -- the federal government was

1 looking at was whether the policies that the University of
2 Virginia had were compliant with the legal requirements?

3 A That was my recall, yes. This is the only thing I'm
4 looking at that I brought today, because it's been so long
5 ago, the letter that they wrote us.

6 "OCR's review will examine the university's policies and
7 grievance procedures regarding sexual harassment and sexual
8 assault and will examine the training the university provides
9 its staff to handle these complaints."

10 Q And what is that document? We probably need to mark
11 that.

12 A That's all right. That's a July 15, 2011 -- because I
13 just couldn't remember anymore -- letter.

14 MR. CLARE: Your Honor, this document has been the
15 subject of a pretrial ruling. The scope of inquiry about it
16 has been addressed previously.

17 THE COURT: Ladies and gentlemen, the Court has
18 dealt with a number of matters in this case, the admissibility
19 of evidence, on a pretrial basis. And one of the rulings that
20 I made is that a number of the documents that deal with events
21 after the publication of the article, after the investigation
22 of Jackie's allegations, after the main part of the case had
23 closed down are not really important for your consideration.
24 They have some relevance in deciding what the timeline of the
25 case is -- remember, I spoke to you about the timeline at the

1 outset -- but have no independent relevance. The
2 Charlottesville police report fell in that category; the OCR
3 report falls in this category as well.

4 So while I'm allowing you to know the bottom line,
5 the determination of the investigating agency for purposes of
6 both reports, it was the Court's rule that the reports
7 themselves have very little bearing on the findings that you
8 need to make in this case.

9 So with that limiting instruction, the questioning
10 can continue, but I agree that the letter is not admissible,
11 nor is the report itself.

12 MR. PAXTON: Well, and I believe --

13 THE WITNESS: I apologize, Your Honor. I'll leave
14 that alone. I didn't --

15 THE COURT: You had no way of understanding what the
16 Court's rulings have been.

17 MR. PAXTON: The only reason that I asked to have it
18 marked is I believe he said it was a 2011 document, not the
19 later document. But that's --

20 THE COURT: Does it verify something that the report
21 itself doesn't? If it just evinces some indication that the
22 investigation was going to begin, then I see it has no real
23 importance.

24 MR. PAXTON: I agree. I just -- for the record, I
25 wanted to offer that as an exhibit.

1 THE COURT: Objection sustained.

2 BY MR. PAXTON:

3 Q So, Dean Groves, from the time that you received the
4 letter that you referred to in 2011, or at least were made
5 aware of that letter, there was an ongoing investigation by
6 the federal government into how the university was compliant
7 with its Title IX obligations?

8 A Yes, right.

9 Q And would you agree with me that UVa was not doing enough
10 to respond in a timely and efficient manner to reports of
11 sexual assault under the 2011 policy when the student elected
12 not to pursue criminal charges or the disciplinary process at
13 the university?

14 A Would I agree that we were not doing enough?

15 Q Right.

16 A No.

17 Q And would you agree that the Office of Civil Rights
18 disagreed with you on that issue?

19 A Ultimately?

20 Q Yes.

21 A Yes.

22 Q And that included a determination as to how the
23 university had handled its responses to cases where no formal
24 charge was brought and no criminal charge was involved either?

25 MR. CLARE: I think we're getting into the area of

1 subfindings that was discussed in the Court's pretrial
2 rulings.

3 THE COURT: I agree.

4 MR. PAXTON: Okay.

5 BY MR. PAXTON:

6 Q There's been testimony from Ms. Eramo that the Office of
7 Civil Rights found that she had created a hostile work
8 environment -- or hostile environment for students based on
9 the WUVA interview that was broadcast; is that correct?

10 A Am I aware of that?

11 Q Yes.

12 A Yes.

13 Q And that fact became known in the public. In other
14 words, it was reported in the newspapers and around; is that
15 correct?

16 A It was put into the public domain.

17 Q Right.

18 A It got nothing like the attention your client's article
19 did.

20 Q Let's back up for that for just a minute.

21 You mentioned earlier that, after the article came out,
22 you actually were provided a link, I think, to the full
23 interview with WUVA?

24 A Yes.

25 Q And that CNN had run an issue about that; is that

1 correct?

2 A I believe I was told that, yes.

3 Q And do you recall that CNN actually contacted you and/or
4 the university to interview Ms. Eramo about the contents of
5 that interview?

6 A I don't remember them contacting me. If they did, I
7 would have sent it to Anthony or Dave. If they did, I would
8 have forwarded it on to public affairs.

9 The only request that I remember getting was one from
10 Time magazine that wanted to interview Nicole and me after the
11 article ran, and I declined that and sent it on to the public
12 affairs folks.

13 But I was interviewed by NBC 29 and the Daily Progress,
14 the local media.

15 Q Can we pull up Defense Exhibit 55, please. DTX312.

16 Let's start at the top of the e-mail, since that's what
17 you're copied on.

18 This is an e-mail exchange from November 25, 2014. And
19 you see that you're copied on this?

20 A I'm looking. I'm sorry. Yes, yes, yes.

21 Q Okay. And so at the bottom, there is an e-mail from CNN
22 saying that they are "working on a story about the situation
23 with UVa regarding sexual assault on campus and would really
24 love to include your voice. We've seen the overwhelming
25 support for you" -- this is addressed to Ms. Eramo -- "from

1 students, alumni, and others and feel it's important to hear
2 from you. We'd like to do an on-camera interview today if
3 possible."

4 And so this was the first request that you had gotten; is
5 that correct?

6 A No. The first request to be interviewed after the
7 Rolling Stone piece?

8 Q Right.

9 A No, not to my knowledge. I think the local media were
10 pretty fast in asking the president and I to give interviews.

11 Q And so if you look at Ms. Eramo's response, which she
12 copied you on, "I'm getting more requests like this one. I
13 know it's a ploy to get me in front of cameras and to get me
14 to say something I probably shouldn't. And I do" --

15 A I see that. I guess her line "I'm getting more requests
16 like this one" tells me this might not have been the first,
17 but I -- but yes.

18 Q And then it says, "That said, I do feel like I could
19 convey my passion and care for this work and dispel some of
20 the absolute vitriol that is being said about me right now
21 because of that stupid WUVA student project."

22 A I see that.

23 Q And so on November 25, Ms. Eramo was concerned about
24 addressing the issue of the WUVA interview, correct?

25 A That's what it seems to say here, yes, absolutely.

1 Q And did she appear -- was she given permission to talk to
2 CNN?

3 A I don't recall another e-mail, but I know she never did
4 appear on CNN, and I'm pretty confident that public affairs
5 said no. But I don't think that I was ever told that; I just
6 know it never happened.

7 The only interviews that I'm aware of were the ones that
8 the president and I ended up giving.

9 Q Right. There's one more line of questions, and then I'm
10 done.

11 A That's quite all right.

12 Q Now, after -- after the article came out, you were aware
13 that Jackie met with the police?

14 A I'm trying to think. I'm sorry.

15 Q Sure. No, sure.

16 A I know -- I'm sure you have this date. There was a date
17 where the president announced that she was asking the
18 Charlottesville police to -- essentially sua sponte to
19 investigate it. Because I remember -- there were so many
20 things in the Rolling Stone article that I had never seen or
21 heard on Jackie's case, that the 20th, I started looking into
22 some of those facts that were in the article.

23 I pulled, for example, the anthropology course roster.
24 She said the young man was in her anthropology course and that
25 it was hard for her to go back to the class. I pulled the

1 roster. It was a very small class, less than ten males. I
2 pulled the Phi Psi roster from 2012, and there were no
3 matches.

4 But then I was immediately told to stand down because the
5 police were going to take this case. So I know -- I just
6 can't remember how fast, but I think it was pretty fast, that
7 the president asked the Charlottesville police to take it.

8 Q In fact, it was the same day as the article?

9 A That may be, because I know when I started looking into
10 it on the 20th I was told to stop.

11 Q So prior to the article coming out, everybody that you
12 knew at UVa believed that Jackie's story was true?

13 A Prior to the Rolling Stone article coming out?

14 Q Right.

15 A Yes, I think that's -- well, strike that.

16 I can't speak for everybody at UVa. I believed that it
17 was true.

18 Q And as far as you could tell from Ms. Eramo, she believed
19 it was true as well, based on your interactions with her?

20 MR. CLARE: Object. It calls for speculation.

21 THE COURT: We've been letting witnesses testify as
22 to their sense and impression, so I think it's fair to let the
23 dean do so as well, if he can. If he can't, he can say so.

24 THE WITNESS: Thank you, sir.

25 Yeah, I don't recall prior to the article Nicole

1 expressing doubts to me.

2 I do remember, when I met with the student
3 leadership of Phi Psi -- there were four or five of the young
4 men that came in to see me in September after I had called in
5 the national office and then I called those student leaders
6 in. And when I walked them through the allegations -- having
7 been a trial lawyer for a long time, I'm a reasonably good
8 judge of a witness, or at least I believe that I am -- they
9 seemed genuinely stunned and shocked and overwhelmed by what I
10 was telling them. And I had told them that something like
11 this had happened multiple times, somebody must have talked
12 about it, somebody must have said something.

13 And then -- so I know that they seemed -- that was
14 one thing I will tell you. They seemed stunned. And these
15 were young men who were fourth-years, meaning they had been
16 third-years when that alleged January incident had happened.
17 And at UVa, third-years tend to be the ones that live in the
18 fraternity house. So they would have been, in some cases, the
19 young men living in that house at that time and seemed
20 genuinely stunned and shocked by what I was telling them.

21 That was the only thing prior to the publication, in
22 my mind, that had caused me to say that's odd; that they
23 genuinely seemed overwhelmed and stunned.

24 BY MR. PAXTON:

25 Q But as you've testified, it didn't change your belief

1 that the allegation was likely true?

2 A No. I still believed at that point it was true.

3 Q And so -- but you did become aware that Jackie refused to
4 cooperate with the police; isn't that true?

5 A Probably not until Chief Longo had his press conference,
6 because the police weren't updating me. If they were updating
7 others -- I know at some point -- I think it was Chief Longo,
8 wasn't it, that said she declined to cooperate with us? But I
9 don't remember if anybody told me that before.

10 Q You were designated as an official representative for the
11 university to testify on certain matters at your deposition in
12 this case.

13 A Yes. Last spring, yes.

14 Q And as part of that, you were designated to testify about
15 communications between the university and Jackie about this
16 issue, correct?

17 A I may have been. I know I didn't read all of the text
18 messages between Laurie -- Dean Casteen, Laurie Casteen, and
19 Jackie. Laurie was supporting Jackie. So I've never read
20 through all of those, no.

21 Q And do you recall at your deposition that you were shown
22 a communication from the university to Jackie -- Jackie's
23 lawyer, with a proposed statement for Jackie to sign?

24 A Oh, yes. You and I talked about it this morning as well,
25 yes. Yes.

1 Q Right. Let me show you what's been marked as Defendants'
2 Exhibit 79.

3 A Yes.

4 Q Is this a communication from the University of Virginia
5 to Jackie's lawyer on December 17, 2014?

6 A Yes. As I told you this morning outside the province of
7 the jury when you asked me about this, yes, Rick Kast, at this
8 time, was an associate general counsel at the university, one
9 of the university's attorneys. And while I didn't see this at
10 the time, I was shown this in my deposition. And as I said
11 then, I believe, and as I told you this morning, I have no
12 reason to believe this wasn't sent by Rick Kast to Jackie's
13 attorney on the date and time noted.

14 Q All right. And you were aware, were you not, that the
15 university was attempting to get Jackie to sign a statement to
16 try to clear up some of the confusion that people had about
17 her story?

18 A Yes.

19 Q And this was that communication, as far as you know?

20 A Yes.

21 MR. PAXTON: Move admission of this exhibit, 79.

22 THE COURT: Let's see. 79, without objection.

23 (Defendants' Trial Exhibit 79 admitted)

24 MR. PAXTON: If you'd publish this to the jury.

25 BY MR. PAXTON:

1 Q And this is DTX36. Turn to the second page.

2 A And, again, Counsel, just so the record is clear -- I
3 don't want the jury confused -- I didn't author this, nor did
4 I see it at the time, but I've been shown it since then. And,
5 yes, I know who these people are at the university. Yes.

6 MR. PAXTON: And if you turn to the second page,
7 Scott.

8 BY MR. PAXTON:

9 Q The first paragraph of this would be a statement that
10 says "The account in the November 19, 2014, Rolling Stone
11 article 'A Rape on Campus, a Brutal Assault and Struggle for
12 Justice at UVa,' does not accurately reflect what I told the
13 writer of the story, Sabrina Rubin Erdely."

14 That was a statement that the university was asking
15 Jackie to agree with; is that correct?

16 A That's what this appears to me to be, yes.

17 Q Do you know if -- did Jackie or her lawyer ever agree
18 with this statement?

19 MR. CLARE: Object on foundation grounds. I think
20 the witness has already testified he wasn't involved in this
21 exchange.

22 THE COURT: It's a different question. The witness
23 can answer if he knows.

24 THE WITNESS: Thank you, Your Honor.

25 I have no idea. I never saw it if it was agreed to.

1 BY MR. PAXTON:

2 Q Okay. Were you aware at the time that, if Jackie had
3 signed this statement, or one like this, that the university
4 intended to release it to the public?

5 MR. CLARE: Same objection.

6 THE COURT: Same ruling. If he knows, he can
7 answer. If he doesn't know, he can say so.

8 THE WITNESS: I do not know because I wasn't
9 involved in this transaction, this communication.

10 MR. PAXTON: Thank you. You've been very patient
11 with my questions. Thank you very much.

12 THE WITNESS: You're quite welcome.

13 REDIRECT EXAMINATION

14 BY MR. CLARE:

15 Q Thank you again, Dean Groves. I'll try to be brief.

16 Mr. Paxton asked you a series of questions about a draft
17 article that was apparently being prepared for the UVa alumni
18 magazine. Do you recall those questions?

19 A Oh, I do.

20 Q And he asked you a series of questions about the
21 decision-making around why that article was published. Do you
22 recall generally that, those questions and the answers that
23 you gave?

24 A Yes. I was asked why the article never ran.

25 Q And based on your involvement in those discussions, did

1 the reasoning for why the article never ran, or the
2 discussions that were had about that issue that you were
3 involved in, did any of them involve a desire by the
4 university not to talk publicly about issues related to campus
5 safety or sexual assault?

6 A No. As I mentioned earlier, I had used the 36 or 38
7 number in conversations with parents of incoming students that
8 previous summer of 2014. And I thought we had talked --
9 there's video of it on the web -- when we presented to the
10 board of visitors about all the new initiatives we were trying
11 to undertake.

12 Q Mr. Paxton asked you a series of questions about Madison
13 Lane. Do you recall that?

14 A Yes.

15 Q And he asked you a series of questions about fraternities
16 that sit on Madison Lane. Do you recall that?

17 A Yes.

18 Q And, in particular, the ones that have the name "phi" or
19 "psi" in the name of the fraternity.

20 Do you recall that?

21 A Phi was the word, yes.

22 Q Phi was the word.

23 A Yes.

24 Q And you testified in response to his question that it
25 depended on how you defined Madison Lane or the Mad Bowl area.

1 And Mr. Paxton asked you just about the fraternities that were
2 on Madison Lane.

3 If you were to expand that geography to include what is
4 colloquially referred to as the Mad Bowl area, what would
5 happen to the number of fraternities that would include that
6 denomination?

7 A You would add -- there were three fraternities on the
8 other side of Mad Bowl that face it in a little U. They
9 include, Chi Phi, Sigma Phi, and Kappa Sig. So two of those
10 have "Phi" in the name.

11 Q Mr. Paxton asked you a series of questions --

12 A And I should -- I'm sorry. I should finish that
13 question. I apologize.

14 When Jackie reported the bottle-throwing to Dean Eramo,
15 the two fraternities that she believed might be responsible
16 were Phi Kappa Psi and Sigma Phi, which is known as "Surf."

17 Q And both of those are located on Mad Bowl?

18 A Sigma Phi faces Mad Bowl from the west; Phi Psi sits at
19 the end of Mad Bowl on the north.

20 Q Mr. Paxton asked you a series of questions about these
21 anonymous allegations that Jackie had reported from other
22 women about assaults on -- that allegedly occurred at the Phi
23 Kappa Psi house.

24 Do you recall him asking you those questions in the
25 testimony?

1 A I do.

2 Q In describing your decision-making or in thinking about
3 your decision-making as it relates to those anonymous reports,
4 and also Jackie's report, given her willingness to go forward
5 or not go forward, what role, if any, does the concept of due
6 process play in those considerations?

7 A As I mentioned -- maybe not articulately enough for the
8 jury, and I apologize -- but when I said I have to be able to
9 prove a case, I have to be able to make a case, the students
10 who are charged with any misconduct are entitled to due
11 process. As a public institution, we are governed by the U.S.
12 Constitution. The Constitution only applies to state actors,
13 meaning the state and federal government. We are the state,
14 unlike a private school like Duke, so we are required to
15 provide appropriate procedural due process to students. And
16 the way we interpret it, also organizations that are accused
17 of misconduct.

18 So when I said earlier my frustration, that built to
19 anger, over the fact that I was not being given the facts that
20 I needed to be able to make the case and prove that case,
21 that's what I was talking about. Because I couldn't simply
22 shut them down without being able to make a case, and I
23 certainly couldn't go after an individual student without
24 being able to make the case.

25 As I also said, my hope, when all of this was disclosed

1 to me, was that individuals would be criminally prosecuted.
2 And I remember, when I read the Rolling Stone article, you
3 know, part of my frustration was Ms. Erdely appeared to have
4 been given all sorts of names of witnesses and people that
5 were allegedly involved in this that were never, ever given to
6 us.

7 Q Mr. Paxton asked you a series of questions about media
8 requests that Ms. Eramo and maybe others in your office had
9 received about the WUVA interview from CNN and other national
10 outlets.

11 Do you recall that testimony?

12 A I do.

13 Q Prior to publication of the Rolling Stone article "A Rape
14 on Campus," had you or anyone in your office, to your
15 knowledge, received media inquiries from a national outlet or
16 otherwise asking about that WUVA interview?

17 A I had not, and no one in my office told me they had.

18 Q Mr. Paxton asked you a series of questions designed to
19 elicit a timeline of various steps that you and your office
20 took relative to Jackie's allegations and the timeline of your
21 knowledge of the Rolling Stone article and when Ms. Erdely was
22 on campus.

23 Do you recall generally that testimony?

24 A Yes.

25 Q What role, if any, in your own words, did the fact that a

1 Rolling Stone reporter was asking questions and pursuing a
2 possible article play in any aspect of your handling or your
3 office's handling of Jackie's allegations?

4 A None. I mean, I was cognizant, as I've said before, I
5 think in the summer, that Rolling Stone was looking at an
6 article. It was described in different ways at different
7 times. But no.

8 Q I want to look at one document that Mr. Paxton showed
9 you. It's DTX71, if you can pull that up briefly.

10 Do you recall that -- Dean Groves, that this is a series
11 of e-mails from September of 2014 relating to the
12 decision-making around whether Ms. Eramo would participate in
13 an interview with Rolling Stone?

14 Do you recall that?

15 A Yes.

16 Q And this is dated September -- your e-mail was dated
17 September 9, 2004, approximately two months before publication
18 of the article.

19 A I'm trying to do the math in my head. Yes, you're right.

20 Q And in your e-mail you said "The description of
21 hypotheticals, OCR, specific cases, et cetera, leads me to
22 believe this is a hatchet job."

23 Do you recall in September of 2014 predicting that the
24 Rolling Stone article would be a hatchet job?

25 A Yes.

1 Q And as you sit here today, two years after the
2 publication of "A Rape on Campus" and everything that's come
3 from it, how would you evaluate your prediction?

4 A You remember from my deposition, I don't like talking
5 about that article and the impact it had on a lot of people.

6 The summer after, the summer of '15, I remember sitting
7 with the head of the counseling center, and he said to me --

8 MR. PAXTON: Your Honor --

9 THE COURT: I'm going to sustain that objection.

10 MR. PAXTON: It's a simple answer.

11 THE WITNESS: Well, I'm sorry, sir. It mattered a
12 lot in my life.

13 But the short answer is, yes, I think it was a
14 hatchet job.

15 MR. CLARE: Thank you, sir. Those are all the
16 questions I have for you. Appreciate your being here.

17 THE COURT: Let me ask you then, Dean, in response
18 to that last question, having read "A Rape on Campus," do you
19 believe that the central theme of the article was to attack,
20 critique, suggest change in the victim choice policy in
21 handling sexual assault complaints at the University of
22 Virginia, and perhaps other universities as well?

23 THE WITNESS: No, sir. And I can only speak to my
24 interpretation of the article.

25 THE COURT: That's fine.

1 THE WITNESS: When I read it that morning and I read
2 it subsequently, I thought it -- and it's funny, because I
3 actually read it again a few weeks ago knowing that I would
4 testify. And I hadn't read it in a long time.

5 And, in hindsight, I look at it now and I say it was
6 so over the top that how -- how did people believe it? How
7 did I get caught up in that moment and feeling so traumatized
8 by it? Because I read it, and still to this day read it, as
9 designed to make an almost comic demonization of the people
10 that were trying to do this work at universities.

11 I mean, the interposition of quotes from, you know,
12 critics of sexual assault handling around the country, the way
13 in which I was described -- which I have always said was false
14 and wrong -- the way Ms. Eramo was described -- which I've
15 testified in my deposition was ten times worse than what I
16 got -- I thought it characterized us as indifferent, as,
17 indeed, intentionally misleading the university community, as
18 distracting students from pursuing their rights, preventing
19 people to be held accountable for this.

20 And I know in my heart and in my mind, sir, that
21 that is not true.

22 THE COURT: Any other questions of this witness,
23 Mr. Paxton?

24 MR. PAXTON: Just one. Hopefully, one.

25 THE WITNESS: That's all right. I'm here, so...

1 RECROSS-EXAMINATION

2 BY MR. PAXTON:

3 Q On several occasions, you expressed kind of a level of
4 frustration and anger that Jackie had not wanted to provide
5 more information to the university prior to the article coming
6 out.

7 A Yes, sir, absolutely.

8 Q But under the policy that the university had, that was --
9 she had the absolute right to do that; isn't that true?

10 A She did.

11 Q And that's the issue of victim choice, correct, that she
12 had the right to choose, and that limited what the university
13 could do, from your perspective; is that right?

14 A Yes, sir. She had the right to say "I'm not going to
15 cooperate with you and help you with this."

16 But as I've testified earlier in response to one of your
17 questions, sir, when you're making the kind of allegations she
18 was making and you're not providing the university with
19 information that you later provided to a reporter, so that we
20 could interview witnesses and try to do something, I remained
21 frustrated by that, yes, sir.

22 Q But at the time, that was the way the policy was set up,
23 and she was within her rights to do so, correct?

24 A And she would be within her rights today to do so,
25 because we allow students to say -- we can't coerce them into

1 testifying and providing information. We don't have that
2 authority.

3 MR. PAXTON: Thank you.

4 THE WITNESS: You're welcome, sir.

5 THE COURT: Any other questions of this witness?

6 MR. CLARE: No, Your Honor.

7 THE COURT: May the witness be excused?

8 MR. CLARE: Yes, he may.

9 THE COURT: You may stand down. Thank you. Thank
10 you for your time.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You're excused.

13 Ladies and gentlemen, at this time, we'll have our
14 lunch recess. I would again ask that while you're away from
15 the court, you not discuss the case with one another nor
16 permit anyone to discuss it with you.

17 Let's plan to return at 1:30.

18 Ask the marshal to declare the court in recess for
19 lunch.

20 (Lunch recess)

21 CERTIFICATE

22 I, JoRita B. Meyer, certify that the foregoing is a
23 correct transcript from the record of proceedings in
24 the above-entitled matter.

25 /s/ JoRita B. Meyer

Date: 10/26/16